Supreme Court, U.S.
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In the
Supreme Court of the United States

J.H. and J.D. by and through their father,
TODD HIGGIN

Petitioners,

v.

GORDON JOHNSON, GARY T. MORGAN, AMY REMINGTON, LYNN CROWTHER, MICHAEL HORSTMAN, INA DENTON, GLORIA LEWIS AND LUIS SOTO

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

On any given day, more than a half million children are in foster care in the United States, having been placed there by units of state government. The justification for involuntarily removing such children from their natural parent or parents is to prevent further neglect or abuse of the children but it is widely recognized that children suffer neglect and abuse including sexual abuse in foster care placements. State statutory and regulatory provisions exist which are intended to ensure the provision of appropriate safety, care and services for children in foster home placements including the appointment of plenipotentiary guardians; nevertheless, children in foster care do not receive protection from neglect and abuse at the hands of their foster parents because the foster care system does not provide an enforcement means to ensuring that those state actors charged with the task of providing for the safety of children in foster care actually take affirmative steps to carry out their statutory and regulatory duties to provide for the safety, care and services of those children in foster care.

The question presented is whether children in foster care have Fourteenth Amendment Due Process protected substantive and procedural continuing liberty interests to reasonable safety and care in foster home placements and whether state actors have a corresponding affirmative duty to take reasonable measures to provide for the safety and care of children in foster care.

PARTIES TO THE PROCEEDING

The Petitioners are J.H and J.D. by and through their father, Todd Higgin.

The Respondents are GORDON JOHNSON, GARY T. MORGAN, AMY REMINGTON, LYNN CROWTHER, MICHAEL HORSTMAN, INA DENTON, GLORIA LEWIS and LUIS SOTO.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit (Court of Appeals) in this case.

OPINIONS BELOW

The District Court's memorandum opinion and order (per Judge Darrah) granting defendants' summary judgment motion and denying petitioners' summary judgment motion on the liability issue is unpublished, (App. A). The opinion of the Court of Appeals for the Seventh Circuit affirming the District Court is published at 346 F.3d 788, (7th Cir. 2003), (App. B). The orders of the Court of Appeals denying the Petition for Rehearing and Rehearing *en banc* are not published but the final order was entered on December 1, 2003, (App C).

JURISDICTION

The Court of Appeal's decision was entered on October 10, 2003. Petitioners filed a timely Petition for Rehearing and Rehearing *en banc*. The Petition for Rehearing *en banc* was finally denied on December 1, 2003. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case implicated the Fourteenth Amendment to the U.S. Constitution, 42, U.S.C. § 1983 and certain Illinois Revised Statutes and portions of the Illinois Administrative Code provisions dealing with child care, foster homes and abused and neglected children. These

provisions are set forth in the Appendix D and here cited as:

U.S. Constitution Amendment XIV;

42 U.S.C § 1983

Illinois Revised Statutes, 1989:
ch. 23, § 2212.17; ch. 23, § 2214; ch. 23, § 2217 (15)(c),
ch. 23, § 5001; ch. 23, § 5004, ch. 23, § 5004a;
ch. 23 § 5005-(6); ch. 23, § 5017, ch. 23 § 5022.2;
ch. 37, § 801-1, ch. 37, § 801-2; ch. 37, § 801-3(8);
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383.7; 383.8; 401.20 g); 402.2; 402.4; 402.6 b) and c);
402.12; 402.15 a); 402.16

STATEMENT OF THE CASE

This petition seeks this Court's review of an order of the United States Court of Appeals for the Seventh Circuit upholding the granting of summary judgment to defendants and denial of summary judgment to petitioners on the liability issue by the United States District Court for the Northern District of Illinois, Eastern Division, and its further order denying rehearing *en banc.*

The jurisdictional basis for bringing the action in the District Court was predicated upon 28 U.S.C. Section 1331 and 1343 and petitioners claimed a right to relief pursuant to 42 U.S.C. Section 1983 and the Due Process Clause of the Fourteenth Amendment.

FACTS

Petitioners are two siblings, J.D., a male, age 3 years in 1988 at the time of his placement in a foster care home where he was repeatedly sexually abused by the foster father and J.H., a female, age 5 years in 1989 at the time of her placement in a separate foster home where she was repeatedly sexually abused by the foster father. Petitioners had been removed from their natural mother after a finding of neglect in 1988 and placed in the custody and guardianship of Gary T. Morgan, a defendant and employee of the Illinois Department of Children and Family Services (DCFS). The children were placed in foster homes operated directly by the Illinois Department of Children and Family Services (DCFS) or by Ada S. McKinley Community Services, Inc., (McKinley) a not-for-profit social service agency which had a child welfare license issued by the State of Illinois to operate a foster care program under contract with the State. The DCFS caseworker for the children at this time was Amy Remington.

The foster homes in which the sexual abuse occurred were both operated by McKinley when the sexual abuse started, in 1988 in regard to J.D. and in 1989 in regard to J.H. At least one of the foster homes had reverted to direct DCFS operation while the molestations continued. J.D. was sexually abused from March of 1988 to December of 1989. J.H. was sexually abused from February of 1989 to October. 1989. The sexual violations have caused great psychological damage to petitioners. J.H. was in a psychiatric hospital for seven months following her abuse, was then in a residential treatment program for three and a half years after which she was in a therapeutic day school until age 18. She has attempted suicide, needs further treatment and her future outlook is very disturbing. J.D. has never been

able to receive appropriate treatment. He also is in serious need of treatment and he too, has a very disturbing future outlook.

Defendants admit that petitioners were sexually abused. The two foster fathers were both convicted of aggravated criminal sexual assault. Defendants were all employees of DCFS and are as follows: Gordon Johnson who was the Executive Director of DCFS; Gary T. Morgan who was the court appointed guardian of petitioners and the DCFS Guardianship Administrator; Michael Horstman who was DCFS Executive Deputy Director; Ina Denton who was DCFS Deputy Director and Director of Cook County Operations; Gloria Lewis who was Associate Deputy Director and Director of Cook County Field Operations; Luis Soto who was the direct supervisor of the two caseworkers assigned to petitioners; and, Amy Remington and Lynn Crowther who were the assigned caseworkers for the children.

In early 1989, DCFS commenced a thorough investigation into allegations of wrongdoing on the part of McKinley and the foster homes it supervised in connection with the operation of the McKinley foster care program. This resulted in a series of confrontations between DCFS personnel and McKinley personnel and lead to the formal assertion of serious license violations by McKinley which would serve as a basis for cancellation of the McKinley child welfare license and the transfer of McKinley foster homes to direct DCFS supervision. DCFS investigators obtained the licensing file maintained by McKinley on the Richard Hill (Hill) foster family home where J.D. was placed and maintained. This file contained three prior complaints of sexual abuse committed by Hill. Contrary to the opinion by the Court of Appeals in its affirmance of defendants' summary judgment motion, there was evidence that DCFS had determined one complaint to be "indicated" that is, probably true, and at least one complaint that previously had not been reported to DCFS, contrary to

DCFS rules. The file also established that more than eight children under age 18 were in residence in the Hill home and this exceeded the maximum limit of eight established by Illinois statute. There was also evidence in the Hill file that he was an alcoholic but no evidence he had successfully completed a treatment program; therefore he was statutorily ineligible to serve as a foster father.

DCFS cited the Hill home as being operated in excess of the allowable limitation on number of children in residence. McKinley applied to Gordon Johnson for a waiver of the limit and he personally denied such request on August 29, 1989. No child was removed from the home.

The McKinley file on William White, the foster father of the home in which J.H. was placed and maintained, reflected that he had a "nervous breakdown" which resulted in the removal of all foster children from the home shortly prior to J.H. being placed in his home; however, foster children had been returned to the home without any evidence of White's mental health treatment and status as required by DCFS regulation. DCFS repeatedly requested McKinley to produce such evidence but it did not and could not because White had not received such treatment. The McKinley file also showed that there were more children in residence in the White home than was permissible.

There are no DCFS license files in existence for either the Hill home or the White home. Accordingly there is no direct evidence that the homes were ever properly licensed by DCFS. There is indirect evidence that the license for the Hill home, assuming it was ever properly licensed, had expired during the ongoing sexual abuse of J.D. and while the DCFS investigation was taking place, but DCFS took no steps in this regard.

The investigation into McKinley and its foster homes revealed so many serious license violations, which DCFS determined McKinley was incapable of or

unwilling to correct, that a decision was made to terminate the contract with the McKinley agency. There is evidence that this decision was made by Johnson, Horstman and Denton and was known by all the other defendants. In September 1989, Johnson and Denton both wrote letters to McKinley informing the agency that its contracts with DCFS to provide foster care services were terminated immediately. Specifically, Johnson informed McKinley of his "present concern for the well-being of the children" in McKinley foster care and "that the contract violations and allegations documented to date have had and continue to have serious consequences for the children," and further that "McKinley has also been paid for placement which violate licensing regulations and for which payments are prohibited." Denton also wrote to all foster families advising them to transfer to direct DCFS operation or the foster children would be removed from the homes. The opinion of the Court of Appeals indicated that one of the homes did transfer to direct DCFS supervision at that time but there is also evidence that the other did also.

McKinley sought a temporary restraining order (TRO) in state court to prevent Johnson from removing children from the foster family homes. The TRO was granted in early October but the contracts with McKinley expired by their terms at the end of October. The state court, in granting the TRO, specifically found that no material change had occurred in the McKinley program between the time DCFS became aware of the license violations (in January, 1989) and the date upon which DCFS decided to terminate the contracts (September, 1989) and further that no children were removed from the McKinley foster family homes nor was there any apparent attempt to do so in the nine months preceding the attempted contract termination.

J.H. was not removed by DCFS personnel but was expelled from the White home by William White on

October 20, 1989, almost three weeks after caseworker Amy Remington had recommended her immediate removal in connection with possible sexual abuse. J.D. continued to remain in the Hill home until December 15, 1989, three days after Hill and three of his older foster sons were arrested for sexual abuse committed against younger foster children residing in the home.

The McKinley child welfare agency license was subsequently cancelled by mutual agreement of McKinley and DCFS.

Todd Higgin, petitioners' natural father, who was not married to the natural mother and against whom no finding of neglect or abuse had been made, gained custody of the children in early 1990 after many months of attempting to obtain custody of his children and remove them from DCFS and McKinley. Almost immediately thereafter, he became aware of the sexual abuse the children had suffered when the children were found performing a sex act together.

The defense mounted below was that none of these defendants had any responsibilities in regard to these children, that the children had been (somehow, but it was never explained how) transferred to the McKinley agency, and that all decisions in regard to the safety, care and placement of the children were made by McKinley. The caseworkers and their supervisor filed affidavits below that their job was merely to monitor the casework services provided by McKinley, that all placement and casework decisions were made by McKinley and that they had no duty to visit the children in placement. The remaining defendants, including the court appointed guardian, all filed affidavits that they had no duty to place the children, to monitor them in placement or to visit the children in placement. Petitioners moved to strike the affidavits as constituting mere legal conclusions as to their duties but their motion was denied. Petitioners renewed their motions to strike but the District Court never ruled on the renewed

motions. Petitioners also presented evidence to rebut the affidavits including statutory provisions establishing sole placement responsibility on the part of the guardian and further extensive responsibilities of the Executive Director. Petitioners also presented evidence that the DCFS job descriptions of the caseworkers were contradictory to their affidavits and included the obligation to visit the children at least monthly. Further, petitioners presented the statutes and regulations governing the operation of DCFS, the requirement of placement of children only in properly licensed foster family homes, the statutory duties of the guardian to maintain physical possession and legal custody of the petitioners and the duty to protect, train and shelter them and to place them only in licensed foster family homes. Petitioners also presented deposition evidence of Johnson, Horstman and Denton as to their knowledge of the investigation of McKinley and the dangers to the children in McKinley placement, which led to the decision to cancel the McKinley contracts.

The District Court apparently found it unnecessary that the conflicting issues of fact be resolved because it determined that, in order to prevail, petitioners would have to present evidence that defendants "knew or suspected that the foster parents with whom Plaintiffs had been placed were likely to sexually abuse Plaintiffs." Petitioners had not presented such specific evidence that the defendants knew or suspected that the foster parents with whom they had been placed were likely to sexually abuse them. The Court of Appeals adopted the District Court's s reasoning.

REASONS FOR GRANTING THE WRIT

A. The decisional standard utilized by the Court of Appeals is in conflict with decisions of this Court in analogous matters and fails to protect substantive liberty interests of foster children.

This Court previously has considered the Due Process rights of natural parents in the involuntary removal of their children by the state, *Lassiter v. Department of Social Services,* 452 U.S. 18 (1981) and *Santosky v. Kramer,* 455 U.S. 745 (1982) and also the Due Process rights of foster parents in the removal of foster children from their care, *Smith v. Organization of Foster Families for Equality and Reform,* 431 U.S. 816 (1977); however, this Court has never directly considered the important question of Due Process rights of children involuntarily placed in foster care nor considered whether such rights extend to safety, appropriate care and adequate supervision provided by state actors while the children are in state custody in foster homes. This question is statistically important because approximately 542,000 children are in involuntary placement in foster care in the United States on a daily basis with approximately 263,000 children leaving foster care and 290,000 entering foster care in 2001, the latest year for which reliable statistics are available. The decision arrived at by the Court of Appeals affords inadequate protection to the liberty interests of foster children and ignores relevant precedent of this Court on similar issues. The decision of the Court of Appeals should be reviewed and reversed.

In this case, the Court of Appeals fashioned what it termed the "modified deliberate indifference" standard to determine the Due Process protections to be accorded to petitioners. The Court of Appeals restricted its consideration only to the narrow issue of the right of foster children not to be placed in foster homes where the foster parents were known or suspected child sexual

abusers and ignored petitioners' other claims of rights. Under the standard set by the Court of Appeals, in order to prevail, petitioners must prove that defendants knew or suspected that petitioners were *at risk of sexual abuse in the specific homes in which they were placed.* The decision below recognizes this burden as being "stringent."

While the "modified" standard purports to be more liberal, since it extends to *suspicion* as well as knowledge, such appearance is wholly illusory because it requires a foster child victim to prove foreknowledge or suspicion on the part of the state actor as to the identification of the perpetrators and the type of abuse they will inflict. This standard sets an impossible burden of proof in essentially all foster child cases because it allows for recovery only in those cases where the state actor is actually or virtually a co-conspirator or accomplice in the sexual assault or is criminally liable for child endangerment. Such standard utterly fails to afford any protection to the rights of children involuntarily placed in foster care. Further, this standard completely absolves the state from any financial responsibility for the abuse to foster children since the state is not financially responsible for the deliberate, wrongful acts of its employees.

In essence, the opinion below, with its narrow focus on the placement decision only, and the determination that such decision properly can be made by unsupervised, non-state actors, holds that unless the state actors knew or suspected that petitioners were at risk not just of abuse or neglect but rather *sexual abuse at the hands of these particular foster parents,* then there can be no liability. Thus, the admonition of this case to state actors is simple and clear: "Don't ask; don't assess; don't do your job, lest you gain suspicion or knowledge of abuse." This should not be the law applicable to foster children and those charged with the duty to protect and care for them.

The decision below clearly is at odds with *Farmer v. Brennan*, 511 U.S. 825, 838-843 (1970), which imposes affirmative duties on prison officials to protect those in custody and also holds that it does not matter to the duty imposed that the official "did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault" nor that "the risk comes from a single source or multiple sources," *Id.*

The narrow focus of the decision of the Court of Appeals fails to address the claims made below. Petitioners' Second Amended Complaint alleged that petitioners' had substantive Due Process protected rights "to adequate treatment and to be free from unreasonable and unnecessary intrusions on their physical, psychological and emotional well-being, including the right to be free of physical and sexual abuse and exploitation." Further, petitioners alleged that they had rights to be "free from placement in foster care environment which State Officials know or suspect is abusive or when the State Officials are unable to exercise the necessary degree of supervision over the children." Petitioners' claims therefore included that of positive liberty interests - adequate care and appropriate placement where state actors could exercise the necessary degree of supervision for their safety. Thus these claims were far broader than the negative right not to be placed in specific foster homes where they were known to be at risk of sexual abuse.

The decision of this Court dealing with a factual setting most analogous to children in foster care is *Youngberg v. Romeo*, 457 U.S. 307 (1982). *Youngberg* articulates the positive liberty interest of an individual involuntarily committed to a state mental institution to safety and treatment adequate to meets his needs. In *Youngberg*, this Court noted "the right to personal security constitutes a 'historic liberty interest' protected substantively by the Due Process Clause," *Youngberg*, at

315. This Court then held that there is a constitutionally protected liberty interest in "conditions of reasonable care and safety" applicable to the involuntarily committed individual, *Youngberg,* at 324. This Court more fully explained the underlying basis for this rule of law in *DeShaney v. Winnebago County Department of Social Services*, 489 US 189, 200 (1989) which holds that "when the State takes a person into custody and holds him there against his will, the constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being," *DeShaney, at* 200.

The rationale for this principle, as explained in *DeShaney*, is that the state cannot exercise its power to restrain an individual's liberty thereby rendering her or him unable to care for them self while at the same time failing to provide for her or his basic human needs including food, clothing, shelter, medical care and reasonable safety. If state actors do so, they transgress the substantive limits on state action provided by the Due Process Clause. *DeShaney, Id.*

Youngberg explicitly held that the Eighth Amendment "deliberate indifference" standard was improperly applied to measure the Due Process rights of involuntarily committed individuals in state institutions. Instead this Court announced the "professional judgment" standard, which requires that state actors make professional judgments in determining whether the rights of involuntarily committed persons to reasonable conditions of safety and freedom from unreasonable restraint are being met,[1] *Youngberg*, 457 U.S. at 321-325. This standard was arrived at by balancing the positive liberty interests of the individual in her or his safety and freedom against the relevant state interests.

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[1] Petitioners explicitly pleaded in their Second Amended Complaint the failure of defendants to make professional judgments.

Here, the Court of Appeals did not undertake to balance petitioners' individual liberty interests in safety and conditions of care against any countervailing state interests. Indeed, it is difficult to imagine any state interests sufficient to balance against the safety interest of a child in foster care, particularly since the state has no constitutionally imposed affirmative obligation to remove the child from his natural parents and undertake her or his care, *DeShaney*, 489 U.S. at 196-197. Accordingly, once the state takes custody of a child, it and its actors assume responsibility and continue to be responsible for her or his reasonable care and safety so long as the child is in state custody.

The facts in *DeShaney* did not involve a child involuntarily removed from his natural parent and placed in the custody of state actors; nevertheless, this Court observed that if the state had affirmatively exercised its power to remove a child from free society and had placed him in a foster home, "we might have a situation sufficiently analogous to incarceration to give rise to an affirmative duty to protect," *DeShaney*, at 200, fn 9. Here, there is no basis for distinguishing the positive liberty interests of involuntarily confined mental patients from those of involuntarily placed foster children. In each instance, the subject has been involuntarily removed from the care of those who have as their natural interest the protection of the child's best interests. In each instance, the only valid basis for the state's action in removing the child is to afford her or him better care and safety than was available in the natural home environment. It is wholly illogical, as well as violative of petitioners' liberty interests, to allow a state to remove a child and place her or him in foster care without also imposing upon the state and its actors a corresponding duty to protect the child's safety.

The only, repeat, the *only* constitutional justification for the action of the State in taking children away from their parents, restraining their liberty interests and

assuming custody and guardianship of them is that such action is necessary for the protection of the children from abuse or neglect.[2] To bifurcate this proposition and allow the state to take children away from their parents without appropriate provision for their safety, care and supervision, thereby exposing them perhaps to even greater injury than previously faced, as was the case here, cannot be accomplished without total disregard of the Due Process rights to safety, adequate care and supervision of the children, once they are in state custody and guardianship. Here, the state took petitioners away from their neglectful mother, assumed physical and legal custody of them and secured the appointment of a state actor guardian who was statutorily charged with "the responsibility of physical possession of a minor and the *duty to protect*, train and discipline him and to provide him with food, shelter, education and ordinary medical care"(Ill. Rev. Stats. 1989, Ch. 37, § 801-3(8)(emphasis added)) and "to act in ways that assures a secure and nurturing living arrangement for each child served by the Department" (89 Ill. Adm. Code § 327.4). Additionally, the state hired child welfare specialists (caseworkers) whose job it was, according to their DCFS job description, to make a minimum of one home visit per month on all active cases and to develop treatment plans and provide services to all children assigned to them. In discharge of these duties of protection, adequate treatment and supervision, petitioners were somehow (and it never has been explained how or under what legal authority)

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[2] Illinois law provides that the purpose of Juvenile Court Act, Ill. Rev. Stats., Chapter 37 § 801 *et. seq* is to secure for each minor coming under the purview of the court such care and guidance, preferably in the minor's own home, as necessary to serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community, "removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal."

turned over to a private agency that made all decisions about the children's safety, treatment and supervision. Accordingly, defendants, who were responsible under state law for the custody, safety and care of the children, made no professional judgment and indeed, no judgment at all, about the children. This occurred in an environment where DCFS was investigating serious allegations of wrongdoing against the agency and its foster family homes that ultimately led to the revocation of the agency's child welfare license. This "investigation" lasted for more than nine months and never resulted in the removal of petitioners from their unlicensed foster homes where one foster father was a reported pedophile and alcoholic and the other was known to have an untreated psychological disability which previously had caused the removal of foster children from his home. These facts were documented in DCFS and the McKinley records but no one took action. The DCFS agency director and his chief deputies testified that were aware of the fact that the children were at risk in their placements within this agency but yet they took action to remove the children from the homes where they were at recognized risk of harm.[3] Even under the *Farmer* deliberate indifference standard, this evidence should have been sufficient to support an inference from the circumstantial evidence so that the fact finder could "conclude that [the defendants] knew of the risk from the very fact that the risk was obvious," *Farmer*, 511 U.S. at 842.

As noted above, this Court applied the "professional judgment" standard to determine the proper protection for persons involuntarily committed to state institutions for other than penal reasons. Foster care is a state institution. It is created by state action, action that the state is not obligated to undertake. If a state utilizes its

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[3] Since this case was disposed of on summary judgment, there were many contested fact issues the Court of Appeals found unnecessary to resolve, given the decisional standard it utilized.

power to remove children from their homes and parents, the state and its actors become charged with the duty to protect the remaining liberty interests of the children in safety, adequate treatment and supervision. The Court of Appeals erred in utilizing its "modified deliberate indifference" standard and the insurmountable evidentiary burdens it imposes and in ignoring the Due Process substantive rights of petitioners to safety and appropriate treatment in an environment that could be adequately supervised by state actors. The defense offered in this case, that the state actors cannot be liable because they did nothing to inform themselves of the conditions into which they allowed the children to be placed and remain, that is, they exercised no judgment whatsoever, should not stand in a civilized, responsible society.

The professional judgment standard is appropriate to measure the protections to be afforded to the substantive Due Process rights of petitioners. While even good faith professional judgments can have unfortunate results, application of this standard to determine what reasonable measures are required to provide for the safety, treatment and supervision of foster children affords the minimal protection the constitution demands be accorded the liberty interests of foster children. Determination and establishment of "professional judgment" as the appropriate standard in the foster care setting warrants this Court's review of and reversal of the decision of the Court of Appeals.

B. The decision below conflicts with opinions of other Courts of Appeal on the same issue.

The decision of the Court of Appeals below is *sui generis* in utilization of the "modified deliberate indifference" standard announced in this case. Further, it is inconsistent with the following decisions from other

Circuit Courts of Appeal which utilize the "professional judgment" standard promulgated by this Court in *Youngberg v. Romeo*, 457 U.S. 307 (1982): *Doe v. New York City Dept. of Social Services*, 649 F.2d 134 (2d Cir. 1981); *Yvonne L., By and Through Lewis v. New Mexico Dept. of Human Services*, 959 F.2d 883, (10th Cir. 1992); and, *Lemoine v. New Horizons Ranch and Center, Inc.*, (174 F.3d 629, 5th Cir., 1999).

C. The Court of Appeals erroneously rejected petitioners' *Roth* argument.

At the relevant times, Illinois had (and still has) detailed and complex legal provisions relating to the protection of children involuntarily placed in its foster care system and for the necessary services to be rendered to them. These provisions have as their basis the Department of Children and Family Services Act and the Juvenile Court Act as further implemented by 89 Illinois Administrative Code. These provisions[4] closely govern the operation of the foster care system and the actions of the appropriate state actors. In brief, these provisions permit only DCFS to assume custody of a child and then detail the circumstances of where (only licensed homes), with whom (only "stable, law abiding, responsible, mature individuals" and not untreated alcoholics) and under what conditions a child can be placed and maintained in foster care (including a written service plan identifying problems and types and duration of social services needed). Further, state actors were required to "ensure that all children in foster homes were protected from exploitation, neglect and abuse," 89 Ill Adm. Code 402.16 (b).

Petitioners argued below that the Illinois statutory scheme which enabled state actors to remove petitioners from the custody of their natural mother also imposed

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[4] Set forth in App. D.

upon them a continuing duty to ascertain that their placement and the conditions of placement afforded petitioners reasonable safety and care and required participation by state actors in such decisions rather than merely contracting all placement and care decisions to non-state actors. Additionally, petitioners claimed in their Second Amended Complaint that DCFS regulations required that the defendants Soto, Remington and Crowther provide at least semi-annual Administrative Case Reviews which were to be hearings concerning petitioners' conditions of safety and determination if required services were being provided, 89 Ill. Adm. Code § 305.6. These conferences did not occur. Additionally, petitioners claimed that defendants Johnson, Morgan, Horstman, Denton, Lewis and Soto were assigning three times as many cases to the caseworkers as the workers could competently handle, thereby making it impossible for them to provide these essential casework services and protect the children. Accordingly, petitioners maintained that they had acquired property rights in the provisions relating to the terms of their placement and care by virtue of the fact that the Illinois legislature had conferred these property rights upon them, including the right to hearing through the Administrative Case Review. This is a property-rights, procedural Due Process argument consistent with this Court's numerous decisions in similar cases.

Petitioners argued, under the authority of *Board of Regents of State Colleges v. Roth,* 409 U.S. 564 (1972), that the Illinois child protection statutes gave them an "entitlement" to receive protective services which entitled them to Due Process protection against state deprivation of such rights, once the state involuntarily removed them from their homes. In *Roth*, this Court held that an individual may have a Due Process protected legitimate claim of entitlement as a "property

interest" arising from state statute or state university rule or policy, *Id.* at *578.*

In the companion case to *Roth*, *Perry v. Sindermann*, 408 US 593, 601 (1972) this Court elaborated that "property" interests subject to procedural due process protection are not limited by rigid, technical forms but rather the term "property'" denotes a broad range of interests that are secured by existing rules or understandings. This Court explicitly held: "A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit..." *Perry*, at 601. Unquestionably, the system of rules envisioned in *Perry* existed in the Illinois DCFS foster care program. This Court further held there that plaintiff in that instance "must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of 'the policies and practices' of the institution," *Perry*, at 603.

This decisional line is well established and further developed by cases such as *Wolff v. McDonnell*, 418 US 539, 557 (1974); *Goss v. Lopez*, 419 US 565, 574 (1975); *Ingraham v. Wright*, 430 US 651, 673 (1977); *Board of Pardons v. Allen*, 482 US 369, 371 (1987); and other decisions of this Court. The Court of Appeals rejected this argument but that also was error. While petitioners' right to safety in their placement is a substantive Due Process right, it is also a procedural Due Process protected right created by the Illinois statutory provisions establishing responsibility of state actors for the safe placement of petitioners in foster family homes and requiring appropriate Administrative Case Reviews. Violation of such rights gives rise to a claim for compensatory damages for the injury done to petitioners who were wrongfully deprived of their Due Process protected rights to the Administrative Case Reviews which had as their purpose determining that safe placement and care and supervision in the

conditions of their placement, was being provided to petitioners.

D. There is no effective means other than the action of this Court to protect children in foster care.

Numerous class action lawsuits have been instituted in order to compel state foster care agencies to adhere to the laws which establish their mandate of care for children. Such suits are unsuccessful and are marked by protracted litigation, recalcitrance on the part of state governments, eventual consent decrees to enforce the provision of services and then backsliding and failure to comply with the consent decrees on the part of state child welfare agencies.[5] In Illinois, a class action lawsuit was initiated in 1988 for this purpose, *B.H. v. Johnson*, U.S.D.C., N.D. Il., E.D., docket number 88 C 5599. This case has been pending for 15 years with a consent decree entered on December 20, 1991 and modified 7 times since. On November 4, 2003, the District Court judge presiding over the case ordered DCFS to provide the court with information regarding unsatisfactory caseworkers, unsatisfactory agencies, inadequate services provided to children and information regarding children in DCFS custody needing mental health services who were not receiving such services. In response, DCFS advised the court that its information systems does not record needs of children nor is there a system to assess such needs, that 40 – 50% of children in DCFS custody have some type of mental health problems, that 30% of such children are not receiving mental health treatment and that 30% of the total number of children in DCFS custody have had 5 or more

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[5] See Children's Rights, *Children's Rights Cases* providing a collection of eleven such cases and pertinent details (available at <hppt://www.childrensrights.org/Legal/cases.htm> accessed January 26, 2004)

placements since coming into DCFS custody.[6] Clearly, the system is not working despite 15 years of court intervention. Similar actions in other states have met with equally unsuccessful results.

A further obstacle to protecting foster children through class action lawsuits developed in Florida in *Bonnie L. ex. rel. Hadsock v. Bush,* 180 F. Supp.2d. 1321 (Dec. 2001). There the State of Florida successfully advanced the abstention doctrine defense that the District Court should not entertain jurisdiction in such cases since to do so would conflict with the jurisdiction of the Florida dependency court system. That decision was upheld by the 11th Circuit in *31 Foster Children v. Bush,* 329 F 3d. 1255 (11th Cir 2003) and this Court denied a Petition for a Writ of Certiorari in that case, 124 S.Ct. 483, 72 USLW 3171, 72 USLW 3303, 72 USLW 3307 (U.S. Nov 03, 2003). A companion trend in the law further making it impossible for class actions on behalf of children in foster care to succeed is this Court's holding in *Gonzaga University v. Doe,* 536 U.S. 273, (2002). There this Court held that there was no personal right of enforcement of Federal law relating to the disclosure of student records unless the legislation specifically provided for a private right of action. No private right of action appears to be specified in the federal laws applicable to child welfare. Accordingly, petitioners and others similarly situated have no affirmative means to enforce their rights and require services but can only seek damages for the state's failure to provide reasonable for their safety, care and supervision. Tragically, such relief comes after the harm is done and is rehabilitative in nature rather than preventative; however, the states, when faced with the obligation to protect the children or pay for not doing so,

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[6] Defendant's Response To Court's November 4, 2003 Order and Questions Regarding Multiple Placements in *B.H. v. Samuels,* U.S.D.C., N.D. Il, E.D. docket # 88 C 5599, page 5 ¶ 11 (Dec. 5,2003).

quickly will learn that prevention is more cost-effective than cure.

It is even more important in the current atmosphere of privatization of social services to strongly protect the safety of the children in foster homes and the responsibility of state actors in relation thereto. Social services in general and child welfare services in particular are increasingly being contracted out to private agencies, either for-profit or not-for-profit corporations as happened in this case.[7] Unless this Court provides a strong economic incentive on the part of the states to take reasonable steps to provide for the safety, care and supervision of foster children, the future of children in foster care is indeed bleak.

Neither is the criminal justice system a substitute for close and careful supervision of children placed in the foster care system. The Court of Appeals pointedly noted that cases like this "portray a sad course of events" *J.H. and J.D. ex rel. v. Johnson et. al.*, 346 F 3rd 788, 792, (7th Cir. 2003) but denied any protection or assurance of safety to petitioners and others similarly situated. In its opinion below, the Court of Appeals suggests that while dereliction of statutory duties by DCFS employees should be a matter of concern to county and state officials, it found that such dereliction does not form a basis for a § 1983 action, *J.H,* at 793. Unfortunately, neither county nor state officials can restore a victim to her or his pre-abuse innocence nor can there be effective protection accorded to children through after-the-fact criminal prosecutions of state actors derelict in their duties. Unless this Court articulates a Due Process right of children in foster care to have professional judgments made about their safety,

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[7] Defendant's Response To Court's November 4, 2003 Order and Questions Regarding Multiple Placements in *B.H. v. Samuels*, U.S.D.C., N.D. Il, E.D. docket # 88 C 5599, page 5 ¶ 11 (Dec. 5,2003) indicating that in Illinois currently 70% of children in out of home placement are with private agencies.

care and supervision in foster care placement and their maintenance there, children in foster care will continue to be abused and neglected. Particularly under the narrow view of the Due Process rights of the children expressed by the Court of Appeals, there is no accountability of state actors regarding the discharge of their duty to take reasonable measures to protect the children. At a minimum, professional judgments should be required of state actors.

E. Statistical significance of the question presented.

As of September 30, 2001, there were 542,000 children in foster care in the United States, having been placed in such foster family homes by state government. 290,000 children entered foster care in FY 2001 and 263,000 children exited foster care that year, representative of the growing trend for children being placed in foster care in increasing numbers. Of the number of children in foster family homes, 24% were 1-5 years old, 24% were 6-10 years old and 30% were 11-15 years old. The mean number of years of children in foster care was 10.1 and the median number of years was 10.6. Non-relative placement accounted for 48% of the children in foster family homes. The average length of stay in foster family homes was 33 months.[8]

In calendar year 2001, 903,000 children were found to be victims of child maltreatment with 57% suffering neglect, 19% being physically abused and 10% sexually abused. The 2001 victimization rate was 12.4 per 1000

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[8] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *The AFCARS Report*,(March 2003) (available at: <http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm>accessed January 29, 2004). The preliminary 2001 statistics are the most recent available.

children in the population. Overall, the rate of victimization is inversely related to the age of children.[9]

As petitioners' Second Amended Complaint below reflected, between 1981 and 1988, the time period most relevant to petitioners' case, the Illinois Department of Children and Family Services, defendants' employer, received 1,694 reports that children in its care had been sexually abused, 4,319 reports that its wards had been physically abused and 2,267 reports that its wards had been neglected. Of these reports, DCFS found credible 534 sexual abuse cases, 1,002 physical abuse cases and 529 cases of neglect.[10]

F. Human significance of the question presented.

The currently accepted statistic of sexual exploitation of children is that 1 in 5 children in the general population, both male and female, are sexually abused before reaching 19 years of age.[11] A 1985 nationwide survey conducted by the *Los Angeles Times* determined that 22% of over 2,000 adults responding acknowledged that they had been abused during childhood. Fewer than half of them had told anyone and 70% of those who did disclose their victimization reported that no effective follow-up action occurred.[12]

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[9] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Child Maltreatment 2001* (prepared by Walter R. McDonald & Associates, Inc., in collaboration with the American Humane Association, under contract ACF–105–99–9801; available at <http://nccanch.acf.hhs.gov/pubs/factsheets/canstats.cfm>

[10] Plaintiffs' Second Amended Complaint ¶ 146.

[11] Hunter, M., *The Sexually Abused Male*, pages 1-2 (New York: Lexington Books 1990).

[12] Finkelhorn, D., G. Hotling, I.A., Loris and C. Smith, *Sexual Abuse in a National Survey of Adult Men and Women: Prevelence, Characteristics, and Risk Factors*, Child Abuse and Neglect, 1990, 14 (no. 1): 19-20.

Sexually abused children are frequently afraid to disclose the abuse because of threats made by their abusers or their own fears of what will happen if they disclose the abuse. Also, most children affected by sexual abuse are either too young to describe it or too young to understand what has happened to them. Young children typically reveal little about abuse in one short assessment interview and usually require multiple sessions before establishing sufficient trust with an interviewer to disclose their exploitation.[13]

No human being survives sexual abuse unscathed. The acts of molestation are indelibly imprinted upon the memory of the victim and the effects are often far reaching, darkly shadowing a lifetime. The younger the age of the victim and the more frequent such violations occur, the more serious are the consequences, not only to the victim but to society as well. Sexual abuse at a pre-pubescent age often results in the hyper-sexualization of the victim with attendant inappropriate behaviors, including sexually reactive behavior. Sexual abuse destroys self-esteem, creating long-lasting feelings of guilt and unworthiness. Female victims tend to internalize these effects and promiscuity, prostitution, substance abuse and suicide are not uncommon sequela of sexual abuse. Males tend to externalize such effects and this results in maladjustment, substance abuse, anti-social, self-destructive and criminal behaviors disproportionate to the general population. Additionally, victims of abuse of both sexes tend to become sexual abusers as adults.[14]

While this Court does not have the power to change human nature, it does have the power to intervene in

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[13] MacFarlane, K.; Waterman, J.; Conerly, S.; Damon, L.; Durfee, M.; *Sexual Abuse of Young Children*, page 316 (New York: The Gilford Press, 1986).

[14] Dominquez, R.Z.; Nelke, C.F.; and Perry, B.D. *The Encyclopedia of Crime and Punishment*, Sexual Abuse, 202-207 (David Levinson, Ed. Sage Publications 2002).

the behavior of state actors and take significant steps to reduce the frequency of sexual abuse of children in foster homes by requiring state actors to make professional judgments about and to follow-up to ascertain that children are reasonably safe, cared for and supervised in their foster care environment.[15]

CONCLUSION

The decision of the Court of Appeals is inconsistent with this Court's decisions regarding both substantive and procedural Due Process and by analogy, with the protection of foster children's liberty interest in their safety, care and supervision while in the legal custody of the state. It also conflicts with decisions of sister Courts of Appeals on the same issue so that this Court should exercise its supervisory power. The decision of the Court of Appeals so narrows the protections afforded to children in foster homes as to render them worthless. The statistical size and human dimensions of this issue warrant careful consideration by this Court. Accordingly, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

Joseph Michael O'Callaghan
Counsel of Record

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[15] Kilpatrick, D.G.; Acierno, R.: Saunders, B., Resnick H.S.; Best, C.C. and Schnurr, P.P., *Risk Factors for Adolescent Substance Abuse and Dependence: Data from a National Sample,* Journal of Consulting and Clinical Psychology, 69, 19-30 (2000)

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APPENDIX A

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

J.H. and J.D., by and through Their father, TODD HIGGIN,	]	
Plaintiffs,	)	
v.	)	95 C 2822
GORDON JOHNSON, GARY T. MORGAN, AMY REMINGTON, LYNN CROWTHER, MICHAEL HORSTMAN, INA DENTON, GLORIA LEWIS AND LUIS SOTO,	)	The Honorable John W. Darrah
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs, J.H. and J.D. ("Plaintiffs"), through their father, Todd Higgin ("Higgin") filed a complaint against Defendants, Gordon Johnson, Gary T. Morgan, Amy Remington, Lynn Crowther, Michael Horstman, Ina Denton, Gloria Lewis, and Luis Soto (collectively "Defendants"), alleging violation of their civil rights under 42 U.S.C. § 1983.[1]

Plaintiffs and Defendants both moved for summary judgment pursuant to Federal Rule of Civil Procedure 56.

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[1] In addition to the instant action, Plaintiffs have filed other actions in the Northern District of Illinois, J.H. v. Curtis, No. 01 C 5090, and the Circuit Court of Cook County, J.H. v. Ada S. McKinley Community Services, No. 95 L 5461.

For the reasons that follow, Defendants' Motion for Summary Judgment is granted, and Plaintiffs' Motion for Summary Judgment is denied.

LEGAL STANDARD

Summary judgment is appropriate when there remains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 40 F.3d 146, 150 (7th Cir. 1994). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses..." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Thus, although the moving party on a motion for summary judgment is responsible for demonstrating to the court why there is no genuine issue of material fact, the non-moving party must go beyond the face of the pleadings, affidavits, depositions, answers to interrogatories, and admissions on file to demonstrate through specific evidence that there remains a genuine issue of material fact and show that a rational jury could return a verdict in the non-moving party's favor. *Celotex*, 477 U.S. at 322-27; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254-56 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp, 475 U.S. 574, 586-87 (1986); Waldridge v. American Hoechst Corp.*, 24 F.3d 918,923 (7th Circ. 1994).

Disputed facts are material when they might affect the outcome of the suit. *First Ind. Bank v. Baker*, 957 F.2d 506, 507-08 (7th Cir. 1992). When reviewing a motion for summary judgment, a court must view all inferences to be drawn from the facts in the light most favorable to the opposing party. *Anderson*, 477 U.S. at 247-48; *Popovits v. Circuit City Stores, Inc.*, 185 F.3d 726, 731 (7th Cir. 1999). Hoever, a metaphysical doubt will not suffice. *Matsushita*, 475 U.S. at 586. If the evidence is merely colorable or is not significantly

probative or is no more than a scintilla, summary judgment may be granted. *Anderson*, 477 U.S. at 249-250.

BACKGROUND

The undisputed facts taken from the parties' Local Rule 56.1(a) & (b) statements of material facts (referred to herein as "Pl.'s 56.1" and "Def.'s 56.1") and exhibits are as follows.

Under the Illinois Child Care Act, 225 Ill. Comp. Stat. 10/2.08, a licensed child welfare agency is "a public or private child care facility, receiving any child or children for the purpose of placing or arranging for the placement of the child or children in foster family homes or other facilities for child care, apart from the custody of the child's or children's parents." (Defs.' 56.1 ¶ 28.) In 1988 and 1989, private licensed child welfare agencies were allowed to file applications for license on behalf of foster family homes. (Defs.' 56.1 ¶ 30.) The private agency completed licensing studies to determine whether a prospective foster home met the standards for licensure. (Defs.' 56.1 ¶ 31.) A timely filed renewal application would cause the foster family's license to remain in effect until the renewal application was completed. (Defs.' 56.1 ¶ 96.)

Children under the guardianship of the Illinois Department of Children and Family Services ("DCFS") who were referred to a private agency would be placed in a foster home by the private agency. (Defs.' 56.1 ¶33.) Caseworkers assigned by the private agency visited the child in the foster home, ensured that the medical and dental needs of the child were met, prepared client service plans for the child, and monitored the child's progress. (Defs.' 56.1 ¶34.)

A caseworker would also be assigned by DCFS. (Defs.' 56.1 ¶35.) It was the responsibility of DCFS to monitor the private agency and its services to insure that the child was getting appropriate services from the agency. (Pls.' 56.1 ¶203.) The DCFS caseworker would monitor the services provided to the child by the private agency by reviewing reports and other documents from the private agency. (Defs.' 56.1 ¶¶ 35,36.) DCFS caseworkers were not required to visit children who were placed in foster homes by the private agency. (Defs.' 56.1 ¶37.)

DCFS has a regional staff, who is responsible for licensing and monitoring the licensing of private agency homes. (Pls.' 56.1 ¶68.) Licensing workers would spot check private agency foster home records at the agency headquarters but, in the normal course of events, no one from DCFS licensing would go to a private agency foster home. (Pls.' 56.1 ¶219.) In the contrast, DCFS foster home licenses in 1988 and 1989 were directly monitored and supervised by DCFS personnel. (Defs.' 56.1 ¶50.)

Defendant Gordon Johnson ("Johnson") was, at all relevant times, from 1988 until 1989, the Director of DCFS. (Defs.' 56.1 ¶2.) Defendant Michael Horstman ("Horstman") was, at all relevant times, from 1986 until 1989, Executive Deputy Director of DCFS. (Defs.' 56.1 ¶5; Pl.'s 56.1 ¶77.) Defendant Gary Morgan ("Morgan") was, at all relevant times, from 1988 until 1989, the Guardianship Administrator for DCFS. (Defs.' 56.1 ¶8.) Defendant Ina Denton ("Denton") was, at all relevant times, from 1988 until 1989, the Dupty Director of the Cook County Division of DCFS. (Defs.' 56.1 ¶11.) Defendant Gloria Lewis ("Lewis") was, at all relevant times, from 1988 until 1989, the Associate Deputy Director of the Cook County Division of DCFS. (Defs.' 56.1 ¶14.) Neither Johnson, Horstman, Morgan, Denton, nor Lewis had any casework responsibilities for

children in DCFS or private foster homes, any direct licensing responsibilities with respect to DCFS or private agency foster homes, or any responsibilities for child placement. (Def.'s 56.1 ¶¶ 4,7,10,13,16.)

Defendant Luis Soto ("Soto") was, at all relevant times, from 1988 until 1989, a Child Welfare Supervisor for DCFS. (Defs.' 56.1 ¶ 17.) Soto was responsible for supervising DCFS caseworkers, including Defendants, Amy Remington-Flom ("Remington") and Lynn Crowther ("Crowther"). (Defs.' 56.1 ¶ 18.) Remington was Plaintiffs' DCFS caseworker from January 27, 1988 until September 15, 1988. (Defs.' 56.1 ¶ 20.) Crowther was Plaintiffs' DCFS caseworker from June 6, 1989 until August 1, 1990. (Defs.' 56.1 ¶ 24.)

Soto did not have any direct casework responsibilities for children in DCFS or private agency foster homes or licensing responsibilities for DCFS or private agency foster homes. (Defs.' 56.1 ¶ 19.) Soto only received information on individual children through his caseworkers. (Defs.' 56.1 ¶ 19.)

Neither Remington nor Crowther were responsible for placing children who were assigned to a private agency in private agency foster homes. (Defs.' 56.1 ¶¶ 21, 25.) DCFS caseworkers, like Remington and Crowther, were responsible for monitoring the services provided to children under the guardianship of DCFS by the contracted private agency. (Defs.' 56.1 ¶¶ 22, 25.) Crowther and Remington would monitor these services by reviewing reports provided by the private agency's caseworkers. (Defs.' 56.1 ¶ 23, 26.) However, Remington and Crowther were not responsible for direct casework for children placed in private agency foster homes, such as home visits. (Defs.' 56.1 ¶ 22, 25.)

During the 1988 to 1989 period, Ada S. McKinely ("McKinely") was such a licensed private child welfare agency with which DCFS contracted to provide specialized foster care to children under the guardianship of DCFS. (Defs.' 56.1 ¶ 27.) The contract between McKinley and DCFS required McKinley to recruit, locate and train foster parents to meet placement needs and to "assess the capabilities and motivations of the foster parents to function as an adequate foster family with particular social and emotional needs." (Defs.' 56.1 ¶¶ 29, 31.) The foster home licenses of McKinley foster homes in 1988 and 1989 were monitored and supervised by McKinley. (Defs.' 56.1 ¶ 56.)

J.H. was born on October 30, 1983. (Defs.' Ex. Q at 932.) Her brother, J.D., was born on January 19, 1985. (Defs.' 56.1 ¶ 39.) Jane Haithcock ("Haithcock") and Todd Higgin ("Higgin") are the natural parents of J.H. and J.D. (Defs.' 56.1 ¶¶ 40, 41, 77, 78.) In 1986, Haithcock was indicated[2] for neglect to J.D. after a child abuse and neglect investigation by DCFS. (Defs.' 56.1 ¶42.) DCFS investigated Haithcock after J.D. suffered severe immersion burns to his feet. (Defs.' 56.1 ¶ 42.)

On February 4, 1987, the Juvenile Court of Cook County issued an order of protection allowing J.D. to remain in his natural mother's physical and legal custody. (Defs.' 56.1 ¶ 43.) During this period of time, Remington learned that J.H. was exhibiting sexually aggressive behavior and may have been sexually abused prior to DCFS involvement. (Defs.' Ex.Q at 870.)

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[2]"Indicated" is a term used by DCFS and the private agencies to denote a finding of abuse or neglect.

On or about January 25, 1988, a Petition for Adjudication of Wardship and supporting documentation was filed in the Juvenile Court of Cook County, seeking temporary custody of J.H. and her siblings. (Defs.' 56.1 ¶¶ 46, 81, 82.)

The J.H. History

From January 27, 1988 until February 3, 1989, J.H. was placed in five DCFS and McKinely foster homes. (Defs.' 56.1 ¶¶ 48, 51, 52, 53, 55, 58, 57.) At these homes, J.H. exhibited behavioral problems, including aggressiveness and abuse toward other children and pets and destruction of property. (Defs.' 56.1 ¶¶ 53, 55, 56, 65.) From February 3, 1989 until October 20, 1989, J.H. was placed in the McKinley home of Sandra and William White. (Defs.' 56.1 ¶ 59.) At all relevant times, the White home was a licensed foster home. (Defs.' Ex. U.) The Whites requested that J.H. be removed from their home due to her behavioral problems. (Defs.' 56.1 ¶67.) On October 20, 1989, J.H. moved to the foster home of M.C. (Defs' 56.1 ¶ 68.) J.H.'s DCFS caseworker at the time, Crowther, was not notified of J.H.'s movement until after the fact. (Defs.' 56.1¶ 69.) On December 21, 1989 and January 18, 1990, J.H. was evaluated by Dr. Suzanne Lee of the University of Chicago Hospitals Division of Child and Adolescent Psychiatry. (Defs.' 56.1 ¶ 70.) Dr. Lee's report did not indicate that J.H. was sexually abused by William White. (Defs.' 56.1 ¶ 70.)

On April 12, 1989, the Juvenile Court adjudicated J.H. and her siblings to be neglected minors and ordered that they be placed in the custody and guardianship of DCFS and the Guardianship Administrator, Gary Morgan. On January 24, 1990, the Juvenile Court vacated DCFS's guardianship and ordered J.H. and J.D. to be returned to the custody of

their natural father, Higgin. (Defs.' 56.1 ¶¶ 72, 102.) After J.H. was returned to her natural father, her father's girlfriend witnessed J.H. performing sexual acts on her brother, J.D. (Defs.' 56.1 ¶ 73.) J.H. reported that she learned the sexual behavior from William White. (Defs.' 56.1 ¶ 74.) The alleged abuse was reported to DCFS on February 27, 1990 (Defs.' 56.1 ¶ 74) William White was subsequently indicated for sexually abusing J.H. (Defs.' 56.1 ¶ 75.)

The J.D. History

From January 27, 1988 until March 15, 1988, J.D. was placed in three DCFS and McKinely foster homes. (Defs.' 56.1 ¶¶ 83, 86, 88.) At each placement, J.D. exhibited behavioral problems, including aggressiveness toward other children. (Defs.' 56.1 ¶¶ 85, 87.) From March 15, 1988 until December 15, 1989, J.D. was placed in the specialized McKinely foster home of Betty and Richard Hill. (Defs.' 56.1 ¶ 90.) At all relevant times, the Hill home was a licensed foster home. (Defs.' Ex. U.) At the time of J.D.'s placement in the Hill home, Remington was his DCFS caseworker. (Defs.' 56.1 ¶ 93.) On December 12, 1989, a report was made to the DCFS child abuse hotline alleging that Richard Hill sexually abused female foster children in his home. (Defs.' 56.1 ¶98.) On December 15, 1989, during the child abuse and neglect investigation of Richard Hill, J.D. was removed from the Hill home and placed in the DCFS emergency shelter. (Defs.' 56.1 ¶ 99.) J.D. did not tell anyone at DCFS that he was being sexually abused in the Hill home. (Defs.' 56.1 ¶ 101.) It was later determined that J.D. had been sexually abused by Richard Hill. (Defs.' 56.1 ¶ 103.)

The McKinley Investigation

In 1988 or 1989, DCFS conducted an investigation into the child welfare license of McKinley. (Defs.' 56.1 ¶ 104.) All of the DCFS personnel in administrative positions were concerned about the safety of children in McKinley homes when they first received complaints about McKinley. (Pls.' 56.1 ¶ 159.) An internal DCFS report recommended revocation of the licenses and cancellation of the contract with McKinley. (Pls. 56.1 ¶ 234.) Johnson, Horstman, and Denton believed that they had a basis for the immediate cancellation of the contract with McKinely for cause rather than using the thirty-day no-cause cancellation. (Pls.' 56.1 ¶ 144.)

The results of the investigation into McKinley led DCFS to give notice to McKinley that it was canceling its contract for services as McKinley did not appear to be correcting licensing violations in its foster homes. (Defs.' 56.1 ¶ 108.) McKinley filed a lawsuit seeking to enjoin DCFS from canceling the contract. (Defs.' 56.1 ¶ 109.) The injunction was granted and prevented DCFS from taking any action against McKinley's contract, including removing children from McKinley foster homes "on the basis of the threatened termination of the contract" between McKinley and DCFS. (Defs.' 56.1 ¶ 110; Defs.' Ex. Y.)

DISCUSSION

Defendants move for summary judgment, arguing that summary judgment is appropriate because: (1) Defendants did not violate Plaintiffs' substantive due process rights; (2) Plaintiffs have not demonstrated the requisite personal involvement of Johnson, Morgan, Horstman, Lewis, and Denton for liability under § 1983; and (3) Defendants are immunized from the state law claims under the doctrines of absolute immunity, sovereign immunity, and public officials immunity.

A plaintiff may prove a violation of § 1983 by establishing that "the defendant acted under the color of state law and ... deprived [plaintiff] of a right secured by the Constitution or laws of the United States." *Kitzman-Kelley v. Warner*, 203 F. 3d 454, 457 (7th Cir. 2000). A plaintiff must also establish that the defendant acted with "deliberate indifference". *Kitzman-Kelley*, 203 F. 3d. at 458. To establish that the defendant acted with "deliberate indifference," "a plaintiff must demonstrate that the defendant had actual knowledge of impending harm which he consciously refused to prevent." *Tesch v. County of Green Lake*, 157 F. 3d 465, 476 (7th Cir. 1998) (citations omitted). A plaintiff must also prove the defendant's personal involvement in the alleged deprivation in order to prove a violation of § 1983. *Kitzman-Kelley*, 203 F. 3d at 458. A Plaintiff must show that each defendant was deliberately indifferent. *Kitzman-Kelley*, 203 F. 3d at 458.

The parties agree that Defendants were acting under color of state law. Plaintiffs argue that they were deprived of their constitutional rights (1) not to be placed in an unlicensed or overcapacity foster home and (2) to be protected from harm in their foster homes after Defendants learned or were in a position to know the conditions of Plaintiffs' foster homes. No court has recognized a right not to be placed in an unlicensed or overcapacity foster home under the Fourteenth Amendment. Moreover, at the relevant times, the foster homes in which Plaintiffs were placed were licensed, and the number of children who may live in a foster home was determined by an Illinois law. A violation of a state law is not a constitutional violation and cannot form the basis of a § 1983 action. *See Archie v. Racine*, 847 F. 2d 1211, 1217 (7th Cir. 1988).

The Seventh Circuit has held that where the state has removed children from the custody of their parents due to abuse or neglect, children have "*a prima facie* right not to be placed with a foster parent who the state's caseworkers and supervisors know or suspect is likely to abuse or neglect" foster children. *K.H. v. Morgan,* 914 F 2d 846 (7th Cir. 1990).

Child welfare workers and their supervisors have a secure haven from liability when they exercise a bona fide professional judgment as to where to place children in their custody. Only if without justification based either on financial constraints or on considerations of professional judgment they place the child in hands they know to be dangerous or otherwise unfit do they expose themselves to liability in damages.

K.H., 914 F. 2d at 854. The danger or inability to be a fit foster parent must be known to the workers' merely negligent or grossly negligent misconduct by state officers is not actionable under § 1983. *K.H.*, 914 F. 2d at 852.

Plaintiffs have not established that Defendants knew, suspected, or had reason to suspect that White or Hill would abuse Plaintiffs. Johnson, Morgan, Horstman, Denton and Lewis did not license McKinley foster homes nor were they personally involved in or responsible for deciding where to place foster children. Neither Johnson, Morgan, Horstman, Denton nor Lewis investigated licensing compliance by individual McKinley foster homes or had casework responsibilities. Neither Johnson, Morgan, Horstman, Denton, nor Lewis was responsible for placement of Plaintiffs in, or licensing of, the foster homes where they were abused. Johnson, Morgan, Horstman, Denton and Lewis were not in a position to possess information that would allow them to know or suspect that the foster parents with

whom Plaintiffs had been placed were likely to abuse them.

Similarly, neither Soto, Remington, nor Crowther possessed any information that would have indicated that Plaintiffs were placed with foster parents who were likely to abuse them. Soto, Remington, and Crowther monitored the services provided to Plaintiffs by reviewing the reports prepared by McKinley caseworkers. None of the reports by McKinley caseworkers indicated that Hill or White sexually abused foster children in their care. Neither Soto, Remington, nor Crowther was responsible for placement of Plaintiffs, in or licensing of, the foster homes where they were abused.

Moreover, there was nothing in the reports provided by McKinley caseworkers that would have indicated that Plaintiffs were being abused or that the foster parents with whom they had been placed, William White and Richard Hill, were likely to sexually abuse them. The evidence presented establishes that as early as 1987, J.H. was exhibiting sexually aggressive behavior and that, before she was placed in the William White home, she was aggressive, abusive toward other children and had killed birds that belonged to foster families. J.H.'s behavioral problems continued after she was placed in the White home. Similarly J.D. also had behavioral problems, such as aggressiveness toward other children, before and after he was placed in the Richard Hill home. There was no change in Plaintiffs' behavior that would have alerted Soto, Remington, or Crowther that they were being sexually abused by Hill or White.

Furthermore, neither J.H. nor J.D. reported the abuse to a McKinley or DCFS caseworker while they lived in the White and Hill homes. The evidence

presented establishes that J.H. and J.D. reported that they were sexually abused only after being returned to their natural father, Higgin. White was not indicated for sexual abuse until after his abuse of J.H. was discovered. Hill was indicated for sexual abuse after his abuse of female foster children was reported. Once Hill was indicated for sexual abuse, J.D. was removed from Hill's home. Neither Hill nor White was indicated for sexual abuse before Plaintiffs were placed in their homes. Soto, Remington, and Crowther had no information that would have caused them to know or suspect that White of Hill was likely to sexually abuse J.H. or J.D., respectively.

The fact that Defendants delegated the responsibilities to monitor Plaintiffs' progress and supervise Plaintiff's to McKinley does not establish personal involvement on the part of Defendants. Likewise, the fact that Defendants delegated those responsibilities to McKinley does not establish that Defendants violated Plaintiffs' right not to be placed in a foster home where they were likely to be abused. Illinois state law expressly permitted this type of delegation to a private agency. The Illinois state legislature determined that private agencies could be licensed to place children in foster homes and license, monitor and supervise those homes and the children in them. McKinley was such an agency. The Illinois state legislature also determined that DCFS was not required to duplicate the functions and services provided by the private agencies. The statutes all provide that either the DCFS or the licensed child welfare agency could perform the necessary functions. This Court will not impose any additional duties on DCFS or its caseworkers and supervisors.

Thus, there is no genuine issue of material fact as to whether Defendants knew or suspected that the

foster parents with whom Plaintiffs had been placed were likely to sexually abuse Plaintiffs. The evidence establishes that none of the Defendants knew or suspected or had reason to suspect that White or Hill was likely to sexually abuse Plaintiffs. Defendants did not violate Plaintiffs' constitutional right not to be placed in a foster home where Defendants knew or suspected Plaintiffs were likely to be abused and; therefore, summary judgment in favor of Defendants is granted.

Summary judgment has been granted on Plaintiffs' federal claims. Therefore, the Court no longer has pendent jurisdiction over Plaintiffs' state law claims. Thus, those claims are dismissed for lack of subject matter jurisdiction. Because summary judgment has been granted in favor of Defendants, Plaintiffs' Motion for Summary Judgment on the Issue of Liability is denied.

CONCLUSION

For the reasons stated herein, Defendants' Motion for Summary Judgment is granted, and Plaintiffs' Motion for Summary Judgment is denied.

John W. Darrah, Judge
United States District Court

Date March 22, 2002

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 02-1964

J.H. AND J.D., by and
through, their father, TODD HIGGIN,

Plaintiffs-Appellants,

v.

GORDON JOHNSON, GARY T. MORGAN,
AMY REMINGTON, LYNN CROWTHER,
MICHAEL HORSTMAN, INA DENTON,
GLORIA LEWIS, AND LUIS SOTO,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 95 C 2822 – John W. Darrah, Judge.

ARGUED SEPTEMBER 4, 2003
DECIDED OCTOBER 10, 2003

Before Flaum, Chief Judge, and EASTERBROOK and MANION, Circuit Judges.

FLAUM, Chief Judge. J.H. and J.D., minor siblings, were sexually abused by their respective foster fathers in foster homes selected for them by Ada S. McKinley Community Services, Inc. ("McKinley"), a licensed private child welfare agency under contract with the Illinois Department of Children and Family Services ("DCFS"). After the abuse came to light, the foster fathers, Richard Hill and William White, were both convicted of aggravated sexual assault. The case

before us today is about the responsibility of various DCFS employees for the placement of J.H. and J.D. in the two homes in which they were abused. J.H. and J.D.'s father, Todd Higgin ("Higgin"), has brought this 42 U.S.C. § 1983 claim on their behalf against Gordon Johnson, Gary T. Morgan, Amy Remington, Lynn Crowther, Michael Horstman, Ina Denton, Gloria Lewis, and Luis Soto for allegedly violating their constitutional right to be free from placement in a foster home where the state knew or suspected that abuse was likely to occur. The district court granted the defendants' motion for summary judgment. For the reason stated herein, we affirm.

I. Background

When J.H. was four years old and her brother, J.D., was three years old, they entered the custody of DCFS as neglected minors after a juvenile court determined that their mother was unfit to care for them. Beginning in January 1988 and continuing through January 1990, the two children lived separately in several different foster homes supervised by either DCFS or McKinley.

Relevant to the claims in this case, J.H. lived in the McKinley home of Mr. and Mrs. White from February 3 to October 20, 1989, and J.D. lived in the McKinley home of Mr. and Mrs. Hill from March 15 to December 15 of that same year. It is undisputed that both J.H. and J.D. were sexually abused by Mr. White and Mr. Hill, respectively. Although neither child reported any sexual contact at the time it occurred, the abuse was discovered once they were returned to the care of their natural father, Higgin. While in Higgin's care, his girlfriend saw J.H. perform a sexual act on J.D. J.H. admitted that she learned the behavior from Mr. White. This led to the discovery that J.H. and J.D. had

each been sexually abused in their respective foster homes. While investigating the molestations, it was revealed that Mr. Hill had been accused of sexually abusing two other foster children in 1980 and 1984, although subsequent DCFS investigations concluded that those allegations were unfounded.

During the time period when J.H. and J.D. were living in the White and Hill homes, McKinley was a licensed private child welfare agency under contract with DCFS to arrange specialized foster care to children under DCFS guardianship. With respect to McKinley homes, DCFS maintained essentially a monitoring role while McKinley's own staff had responsibility for basic operations, including: finding potential foster families; conducting initial studies to determine if families were fit to become foster parents; placing children in individual McKinley homes; and providing direct caseworker services to children, such as making personal home visits and supervising their progress. Each McKinley child was also assigned a DCFS caseworker who would monitor the services provided for the child through the agency's reports and other records, although the DCFS caseworker would not generally visit the child.

The eight defendants named in this suit held various positions at DCFS during the time period at issue. The following five defendants held managerial and supervisory positions within DCFS: Gordon Johnson was DCFS's Director; Michael Horstman was DCFS's Executive Deputy Director; Gary Morgan was DCFS's Guardianship Administrator; Ina Denton was Deputy Director of DCFS's Cook County Division; and Gloria Lewis was DCFS's Associate Deputy Director for the Cook County Division. None of these five defendants personally handled any casework functions for children in DCFS homes or child welfare agency

homes or directly handled any licensing functions for such homes.

Defendant Amy Remington-Flen ("Remington") was a DCFS caseworker assigned to J.H.'S and J.D.'S cases when they were originally placed under DCFS guardianship in January 1988 until September 15, 1988. Gloria Hunt, who is not a defendant in this case, took over this assignment from Remington. Defendant Lynn Crowther ("Crowther") was J.H. and J.D.'s caseworker from June 6, 1989 until August 1, 1990. Defendant Luis Soto ("Soto") supervised Remington and Crowther. In line with DCFS's practice with respect to private agency foster homes, Remington and Crowther did not provide in-person caseworker services for J.H. and J.D. while they were in the White and Hill homes, but rather monitored the casework services provided to them by reviewing McKinley staff reports.

In early 1989, DCFS commenced a licensing investigation of McKinley based on reports that McKinley was receiving "kick backs" from its foster parents. Reports produced by this investigation reflected a wide variety of concerns with McKinley homes, including, for example, the use of corporal punishment; clutter and filth; and inadequate medical and other records. For the White home, the licensing investigation records reported that the household exceeded the licensed capacity by one child, cleaning supplies were accessible to children, and Mr. White had not furnished requested documentation reflecting counseling he supposedly received after a nervous breakdown a few years earlier. The Hill's report found that the household exceeded the maximum number of children permitted, there were no inoculation papers for their dog, and a medical exam for one of the foster children in their case was missing.

The results of the investigation into McKinley led DCFS to give notice to McKinley that is was canceling its contract for services. McKinley filed a lawsuit seeking to enjoin DCFS from taking any action against McKinley's contract, including removing children from McKinley foster homes. As the dispute between McKinley and DCFS ensued, a number of McKinley foster families, including the Hill home but not the White home, transferred to DCFS supervision. Remington visited the White home in October 1989 for the purpose of preparing a foster placement assessment and recommended that J.H. be removed from the home due to behavioral problems. Shortly thereafter, J.H. was relocated to another foster home. In December, three days after a hotline report that Mr. Hill had sexually abused female foster children in his home, J.D. was removed from the Hill home and placed in a DCFS emergency shelter. Both children were eventually returned to Higgin's custody.

II Discussion

We review a district court's grant of summary judgment *de novo*. *Dykema v. Skoumal*, 261 F. 3d 701, 704 (7th Cir. 2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Tesch v. County of Green Lake,* 157 F.3d 465, 471 (7th Cir. 1998) Therefore we must examine the plaintiffs' allegations to see whether the facts, construed in the light most favorable to them, establish an actionable claim under §1983. To succeed on such a claim, a plaintiff must show that: (1) the defendant deprived the plaintiff of a right secured by the Constitution and laws of the United States, and (2) the defendant acted under color of state law. *Reed v. City of Chicago,* 77 F.3d 1049, 1051 (7th Cir. 1996) The second requirement is not an issue in this case as all parties

agree that defendants were acting under color of state law.

As to the first requirement, the plaintiffs claim that the DCFS employees violated their due process rights under the Fourteenth Amendment. Though the state usually does not have a constitutional duty to protect private citizens from doing harm to each other, see *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 202, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1988), we have recognized that children in state custody have a constitutional right not to be placed in a foster home where the state knows or suspects that the children may be subject to sexual or other abuse. *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 852 (7th Cir. 1990); *Lewis v. Anderson*, 308 F.3d 768 (7th Cir. 2002) (finding that right arises under "state-created danger" and "special relationship" exception to the general rule).

Thus, to prevail on a § 1983 claim based on this right, the plaintiffs must not only prove their injuries but must also prove that the state actors knew of or suspected the specific risk facing plaintiffs and consciously ignored it or failed to stop the abuse once it was discovered. *Lewis*, 308 F.3d at 773 ("In order to survive summary judgment [on a § 1983 claim], the plaintiffs needed to put forth a case that the [state's department of health and social services] defendants actually knew of or suspected the existence of child abuse in the prospective adoptive family."). By incorporating a modified deliberate indifference standard (i.e., requiring actual knowledge *or suspicion* of the alleged risk), the right set forth in *K.H.* and *Lewis* aligns itself with Supreme Court decisions and other cases from this circuit dealing with state actors failing to prevent harm to those whom they have a duty to protect. *See, e.g., Estelle v. Gamble,* 429 U.S. 97, 104-06, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (applying the

"deliberate indifference" standard to evaluate decisions regarding the medical needs of prisoners); *Davis v. Monroe County Bd. Of Educ.*, 526 U.S. 629, 119 S. Ct. 1661, 1674, 143 L. Ed. 2d 839 (1999) (applying "deliberate indifference" standard to school officials' response to student-on-student sexual harassment); *Jones v. Simek*, 193 F.3d 485, 490 (7th Cir. 1999) (holding that the test for deliberate indifference is subjective and prison officials will only be liable if they act or fail to act despite knowledge of a substantial risk of serious harm). "Deliberate indifference" is found where an actor responds unreasonably to a substantial and known risk rather than to a risk of which the actor merely should have known. *See Farmer v. Brennan*, 511 U.S. 825, 836-39, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) (equating "deliberate indifference" with subjective recklessness). The standard set forth in *K.H.* and *Lewis* differs from the "deliberate indifference" standard only in the sense that it can be satisfied by proof of a state actor's knowledge *or suspicion* of the risk of harm, rather than just knowledge. Both standards are subjective. Though we have described the burden of proof for plaintiffs asserting § 1983 claims against state child welfare employees as "stringent" and acknowledged that often the underlying facts of cases like this "portray a sad course of events," we nevertheless continue to require plaintiffs to demonstrate that the individual defendants had specific "knowledge or suspicion" of the risk of sexual abuse facing the children in order to hold defendants liable under § 1983. *Lewis*, 308 F.3d at 773.

The Plaintiffs vigorously argue that the appropriate standard for analyzing this case is the "professional judgment" standard as articulated in *Youngberg v. Romeo*, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d. 28 (1982) (holding that decisions regarding the safety training of involuntarily committed mentally

retarded persons made by a professional can be the basis for § 1983 liability only when the decision substantially departed from accepted professional judgment). Employing this standard would amount to us overruling our decisions in *K.H.* and *Lewis.* As *K.H.* made clear, a professional judgment exercised by a child welfare worker serves as a "secure haven from liability" rather than the starting point for determining liability. *K.H.*, 914 F. 2d at 854. ("Only if without justification based either on financial constraints or on considerations of professional judgment [child welfare workers] place the child in hands they know to be dangerous or otherwise unfit do they expose themselves to liability in damages.") A bonafide professional judgment may shield the state's caseworkers and supervisors who acted despite knowledge of a risky placement from liability, but whether such a professional judgment was exercised is not the threshold determination. Knowledge or suspicion that a foster parent is a probable child abuser remains the legal yardstick for measuring the culpability of state actors in § 1983 cases like this one.

Moreover, in order to recover damages against a state actor under § 1983, a plaintiff must show the actor was "personally responsible for the constitutional deprivation." *Doyle v. Camelot Care Ctrs., Inc.*, 305 F.3d 603, 614 (7th Cir. 2002) (citing *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001)). This limitation mandates that a supervisor can be held liable under § 1983 only if he or she "had some personal involvement in the constitutional deprivation, essentially directing or consenting to the challenged conduct." *Doyle*, 305 F.3d at 614 (citing *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir.2001)).

In this case, the plaintiffs essentially argue that the defendants "knew" of the risk of sexual abuse to J.D.

and J.H. because it was the defendants' responsibility to know. In particular, the plaintiffs assert that because Illinois state law requires foster homes, even those supervised by private agencies, as the White and Hill homes were in this case, to be licensed and does not permit DCFS employees to delegate their essential supervisory responsibilities, the defendants must be liable for the plaintiffs' injuries. The plaintiffs' brief describes at length the statutory duties Illinois law imposes on various DCFS workers. However, we find that the plaintiffs' theory of statutorily-imposed knowledge falls short of satisfying their burden of proof.

First, a violation of state law – even assuming one occurred in this case-does not *per se* make a state actor liable under § 1983. State law violations do not form the basis for imposing § 1983 liability. *See, e.g., Windle v. City of Marion, Ind.*, 321 F.3d 658, 662-63 (7th Cir. 2003); *White v. Olig*, 56 F.3d 817, 820 (7th Cir. 1995) ("it is therefore a truism, reiterated many times by this court, that mere allegations of state law infraction are insufficient to support a Section 1983 claim."). While a DCFS employee's dereliction of statutory duties should be of concern to Cook County and the State of Illinois, they do not form the basis of a § 1983 claim. *See Estate of Novack v. County of Wood*, 226 F.3d 525, 531-32 (7th Cir. 2000).

Second, knowledge or suspicion of abuse cannot merely be imputed from a statute. Rather, the plaintiffs need to put forth a case that the DCFS employees actually knew of or suspected the existence of child abuse in the White and Hill foster homes. *See Lewis*, 308 F.3d at 773. Under these circumstances, constructive or statutorily-implied knowledge cannot serve as a substitute for actual knowledge or suspicion. Even if state regulations do fix personal responsibility for children in the custody and guardianship of DCFS

with DCFS employees, the regulations themselves provide no evidence that ay individual defendant had any actual knowledge or suspicion of the problems occurring in these particular households.

In addition, the plaintiffs must shows a connection between any knowledge or suspicion of risk that the defendants may have had and the injury that the children actually suffered. Here, the plaintiffs presented evidence regarding various conditions in the White and Hill homes, including overcrowding and the dangerous placement of cleaning supplies. They also present evidence showing that the homes were not properly licensed at all relevant times. However, we are not persuaded that a reasonable jury could find that knowledge of these problems would have suggested to the defendants that Mr. White and Mr. Hill were likely to sexually abuse their foster children. Absent evidence establishing a strong connection between the presence of these conditions and a risk of child abuse, these allegations are unable to satisfy the plaintiffs' burden of proof.

Our decision in *Kitzman-Kelley v. Warner*, 203 F.3d 454 (7th Cir. 2000) addresses the importance that an adequate link exist between the danger known to state officials and the alleged harm suffered by the plaintiff in cases falling within the "special relationship" exception to the DeShaney doctrine, as does this case. In *Kitzman-Kelley*, a DCFS intern subjected a seven-year-old foster child to a pattern of sexual abuse. It was alleged that the DCFS defendants violated the child's due process rights by failing to provide adequate screening, training and supervision of the intern. We found that the deliberate indifference standard could not be met by merely showing that hiring officials engaged in less than careful scrutiny of the applicant resulting in a generalized risk of harm, but rather the

standard "require[d] a strong connection between the background of the particular applicant and the specific constitutional violation alleged." *Kitzman-Kelley*, 203 F.3d at 459 (citations omitted). Accordingly, proving a general risk of minor dangers is insufficient to warrant liability. It must be shown that there were known or suspected risks of child abuse or serious neglect in particular.

The strongest evidence that the plaintiffs put forward connecting the foster homes to sexual abuse are the two previous allegations of abuse in Mr. Hill's record. Aside from clear evidence of intent, we cannot think of a stronger indication that a foster parent is a probable child abuse than a past record of abuse. But in this case both reports reflect that after DCFS investigation the allegations were determined to be unfounded. Knowing what we do now, it is difficult not to question the accuracy or even the thoroughness of these investigations. However, neither those investigations nor their investigators are currently before the court. In a large state agency like DCFS, it is imperative that labor be divided and that employees be able to rely on the determinations of their colleagues. Absent awareness that these internal investigations were a sham, a reasonable jury could not find that a defendant's knowledge of these reports was equal to knowledge or suspicion that Mr. Hill was a probable child molester.

Ideally, given the severity of the potential harm to children, the strictest precautions should be employed in making foster care placements. Indeed, one could argue that any accusation that an individual abused a child, whether fully established or not, should presumptively disqualify him or her from serving as a foster parent. However, the demands of the placement process may restrict such an approach with the limited

number of appropriate foster parents and occasional false accusations of abuse. Against this backdrop, we cannot conclude in this case that the placement of a child with an individual who had two past accusations of child abuse that were investigated and determined to be unfounded warrants imposing liability on these defendants. As *Lewis* found with regard to a single past incident of a foster parent slapping a child. "[w]hile [it] may raise a red flag, it does not immediately become a 'suspicion' of child abuse." 308 F.3d at 774. See also, *S.S. v. McMullen,* 225 F. 3d 960 (8th Cir. 2000) (en banc) (finding defendants' knowledge insufficient to impose liability despite their awareness that the father with whom the plaintiff child was placed 1) associated with a convicted child molester and 2) underwent a psychological evaluation finding him likely to endanger the child's welfare).

Even if these reports were sufficient to give rise t knowledge or suspicion of child abuse, the plaintiffs present no evidence that any of the defendants were actually aware of them. As previously discussed, there is no liability under § 1983 for what a defendant "should have known," *Pacelli v. DeVito,* 972 F.2d 871, 876 (7th Cir. 1992), nor is there an affirmative duty of inquiry on the defendants' part to learn disqualifying information. See *Lewis,* 308 F. 3d at 773.

The only defendants with any casework responsibilities were Remington and Crowther and, arguably, their supervisor, Soto. The remaining defendants-Johnson, Morgan, Horstman, Denton and Lewis- exercised higher level management roles. The plaintiffs have presented no evidence that any of the defendants involved in child welfare functions-either directly or in a supervisory capacity-personally participated in the challenged placement decisions. It is undisputed that J.H. and J.D. were placed in the White and Hill homes after

Remington was no longer their assigned DCFS caseworker, and before Crowther became their assigned DCFS caseworker. It is further undisputed that placements in individual McKinley homes were selected by McKinley's staff. There is no evidence that any of the defendants were actually aware of the reports that Mr. Hill had been accused of sexually abusing children in his care. Furthermore, it is unclear which, if any, of the defendants knew the details of the McKinley investigation in general and the violations of licensing standards in the White and Hill homes in particular. While it is true that the state cannot avoid its responsibilities to the children in its care by merely delegating custodial responsibility to irresponsible private parties, *see K.H.*, 914 F.2d at 851-52, liability will only arise if the state actor knows or suspects that the agency or foster parents with whom a child is placed are likely to abuse the child. *See Lewis*, 308 F.3d at 773-76; *K.H.*, 914 F.2d at 852-54.

The plaintiffs also cite a number of disturbing statistics regarding the level of abuse within the DCFS system. These general allegations of systemic risk are insufficient to bring this case to a jury. Just as it is necessary for the known risk to be of a particular type (in this case, abuse or serious neglect), it is also necessary that the risk come from a particular source (in this case, the White and Hill homes). While the statistics may show that children in the foster care system are at greater risk of becoming victims of sexual abuse than other children, they do not demonstrate that the defendant knew or suspected the likelihood that these particular homes would generate abuse. One could imagine a truly nightmarish foster care system where any child placed in it would be at a serious risk of becoming the victim of abuse. Notwithstanding the disturbing nature of the statistics that the plaintiffs put forward, one cannot rationally conclude from them that

DCFS or McKinley were running such a system at the relevant time.

Finally, the plaintiffs' arguments regarding evidentiary and legal errors made by the district court are immaterial as we examine grants of summary judgment *de novo*. We find that the plaintiffs' remaining arguments, including their property-right-based argument, lack merit.

In sum, the plaintiffs have not put forth any evidence that these defendants knew of or suspected that J.D. and J.H. were at risk of sexual abuse in the White and Hill homes. The miscellaneous licensing problems in these homes pointed to by the plaintiffs are too general in nature to raise a question regarding whether the named child welfare workers knew of the terrible dangers lurking within. Although a closer call, the reports of previous accusations of abuse in the Hill home are similarly insufficient to have alerted the defendants to the likelihood of abuse given that they were investigated and determined to be unfounded. Moreover, the plaintiffs' case as a whole fails for a lack of evidence demonstrating that each individual defendant had personal awareness of the circumstances surrounding the White and Hill homes.

III. Conclusion

As regrettable as the decisions to allow the Whites and the Hills to serve as foster parents may have been, the plaintiffs have not shown that any of the defendants violated any constitutional rights of J.H. and J.D. That being the case, the district court appropriately granted summary judgment in favor of the eight defendants named in this § 1983 suit. The judgment of the district court is AFFIRMED.

A true Copy:

Teste:

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Clerk of the United States Court
of Appeals for the Seventh Circuit

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

October 31, 2003

Before

Hon. JOEL M. FLAUM, Chief Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

J.H. and J.D., by and through their father, HIGGIN,	] Appeal from the] United States TODD] District Court] for the Northern
Plaintiffs-Appellants,	] District of Illinois,] Eastern Division.
No. 02-1964 v.	]
	] No. 95 C 282
GORDON JOHNSON, GARY T. MORGAN, AMY REMINGTON, LYNN CROWTHER, MICHAEL HORSTMAN, INA DENTON, GLORIA LEWIS AND LUIS SOTO.	]] John W. Darrah,] Judge.
Defendants-Appellees.	]

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc filed in the above-entitled case on October 24, 2003, by plaintiffs-appellants, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

November 4, 2003

Before

Hon. JOEL M. FLAUM, Chief Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

J.H. and J.D., by and through their father, HIGGIN,	] Appeal from the] United States] District Court] for the Northern
Plaintiffs-Appellants,	] District of Illinois,] Eastern Division.
No. 02-1964 v.	]
GORDON JOHNSON, GARY T. MORGAN, AMY REMINGTON, et al.,	] No. 95 C 2822]] John W. Darrah,] Judge.
Defendants-Appellees.	]

The court, on its own motion, VACATES the October 31, 2003, order denying the Petition for Rehearing and Petition for Rehearing En Banc.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

December 1, 2003

Before

Hon. JOEL M. FLAUM, Chief Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

J.H. and J.D., by and through their father, HIGGIN,	] Appeal from the] United States TODD] District Court] for the Northern
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IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby **DENIED**.

APPENDIX D

U.S. Constitution Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection

or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

89 ILLINOIS REVISED STATUTES 1989

Ill Rev. Stat. 1989, ch. 23, § 2212.17 - Types of homes defined

"Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, or residences of relatives who receive no more than 8 related children placed by the Department, unless the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis, except the Director of Children and Family Services, pursuant to Department regulations, may waive the limit of 8 children unrelated to an adoptive family for good cause and only to facilitate an adoptive placement. The family's or relative's own children, under 18 years of age, shall be included in determining the maximum number of children served. For purposes of this Section, a "relative" includes any person, 21 years of age or over, other than the parent, who (i) is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great- grandparent, uncle, aunt, nephew, niece, first cousin, great-uncle, or great- aunt; or (ii) is the spouse of such a relative; or (iii) is a child's step- father, step-mother, or adult step-brother or step-sister; "relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The term "foster family home" does not include an "adoption-only home" as defined in Section 2.23 of

this Act. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all of their board by rendering some services to the family not prohibited by the Child Labor Law or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to

direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

Ill Rev. Stat. 1989, ch. 23, § 2214 - License requirement; application; notice

(a) Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator must apply for a license to operate one of the types of facilities defined in Sections 2.05 through 2.19 of this Act. Application for a license to operate a child care facility must be made to the Department in the manner and on forms prescribed by it.

If, upon examination of the facility and investigation of persons responsible for care of children, the Department is satisfied that the facility and responsible persons reasonably meet standards prescribed for the type of facility for which application is made, it shall issue a license in proper form, designating on that license the type of child care facility and, except for a child welfare agency, the number of children to be served at any one

Ill Rev. Stat. 1989, ch. 23, § 2217 (15)(c)
Minimum Standards for Licensing of Facilities

(c) The Department shall investigate any person applying to be licensed as a foster parent to determine whether there is any evidence of current drug or alcohol abuse in the prospective foster family. The Department shall not license a person as a foster parent if drug or alcohol abuse has been identified in the foster family or if a reasonable suspicion of such abuse exists, except that the Department may grant a foster parent license to an applicant identified with an alcohol or drug

problem if the applicant has successfully participated in an alcohol or drug treatment program, self-help group, or other suitable activities.

Ill Rev. Stat. 1989, ch. 23, § 5001 - Purpose

The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act.

It is the intent of this Act that the child welfare services herein provided do not release the parent or guardian from responsibility to provide for the financial support of their children.

This primary and continuing responsibility applies whether the family unit of parents and children remain intact and reside in a common household or whether the unit has been temporarily broken by reason of child abuse, neglect, dependency or other reasons necessitating state care and training.

It is the purpose of this Act to provide for determination for the appropriate level of support, from parents given their financial circumstances.

Ill Rev. Stat. 1989, ch. 23, § 5004 - Rules; administrative procedure

To make all rules necessary for the execution of its powers. The superintendent of each institution and division of the Department shall make such special rules as may be needed, subject to the approval of the Director. The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Children and Family Services under this

Act, except that Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

Ill Rev. Stat. 1989, ch. 23, § 5004a - Child abuse prevention shelters; service programs for abused and neglected children.

To administer child abuse prevention shelters and service programs for abused and neglected children, or provide for their administration by not- for-profit corporations, community-based organizations or units of local government.

The Department is hereby designated the single State agency for planning and coordination of child abuse and neglect prevention programs and services. On or before the first Friday in April of each year, the Department shall submit to the Governor and the General Assembly a State comprehensive child abuse and neglect prevention plan. The plan shall: identify priorities, goals and objectives; identify the resources necessary to implement the plan, including estimates of resources needed to investigate or otherwise process reports of suspected child abuse or neglect and to provide necessary follow-up services for child protection, family preservation and family reunification in "indicated" cases as determined under the Abused and Neglected Child Reporting Act; make proposals for the most effective use of existing resources to implement the plan, including recommendations for the optimum use of private, local public, State and federal resources; and propose strategies for the development of additional resources to meet the goal of reducing the incidence of child abuse and neglect and reducing the number of

reports of suspected child abuse and neglect made to the Department.

Ill. Rev. Stat. ch. 23, § 5005-(6) - Direct child welfare services

Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department, pursuant to a contract with the Illinois Department of Public Aid, may provide child care services to former recipients of assistance under The Illinois Public Aid Code as authorized by Section 9-6.3 of that Code.

The Department shall establish rules and regulations concerning its operation of programs designed to meet the goals of child protection, family preservation, family reunification, adoption and youth development, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, independent living skills and shelter for homeless youth, placement under Section 5-7 of the Juvenile Court Act or Section 2-27, 3-28, 4-25 or 5-29 of the Juvenile Court Act of 1987 in accordance with the federal Adoption Assistance and Child Welfare Act of 1980, and interstate services. Rules and regulations established by the Department shall include provisions for training Department staff and the staff of Department grantees, through contract with other agencies or resources, in alcohol and drug abuse screening techniques to identify children and adults who should be referred to an alcohol and drug abuse treatment program for professional evaluation.

If the Department finds that there is no appropriate program or facility within or available to the Department for a ward and that no licensed private facility has an adequate and appropriate program or none agrees to accept the ward, the Department shall create an appropriate individualized, program-oriented plan for such ward. Such a plan may be developed within the Department or through purchase of services by the Department or through purchase of services by the Department to the extent that it is within its statutory authority to do.

Service programs shall be available throughout the state and shall include but not be limited to the following services: case management; homemakers; counseling; parent education; day care; and emergency assistance and parent education; day care; and in-home health services. The Department shall provide transportation for any of the services it makes available to children or families or for which it refers children or families.

Ill. Rev. Stat. ch. 23, § 5017 - Division of youth and community services – Goals – Duties

The Department shall establish a Division of Youth and Community Services to develop a State program for youth services which will assure that youth who come into contact or may come into contact with the child welfare and the juvenile justice systems will have access to needed community, prevention, diversion, emergency and independent living services. The term "youth" means a person under the age of 21 years. The term "homeless youth" means a youth who cannot be reunited wit his or her family and is not in a safe and stable living situation.

Ill Rev. Stat. 1989, ch. 23, § 5022.2 - Foster care and adoptive care services training programs

To provide training programs for the provision of foster care and adoptive care services. Monies for such training programs shall be derived from the Department of Children and Family Services Training Fund, hereby created in the State Treasury. Deposits to this fund shall consist of federal financial participation in foster care and adoption care training programs, public and unsolicited private grants and fees for such training. Disbursements from the Department of Children and Family Services Training Fund shall be made by the Department for foster care and adoptive care training services in accordance with federal standards.

Ill Rev. Stat. 1989, ch. 37, § 801-1
Short title. This Act shall be known and may be cited as the Juvenile Court Act of 1987.

Ill Rev. Stat. 1989, ch. 37, § 801-2 Purpose and Policy

(1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal; if the child is removed from the custody of his or her parent, the Department of Children and Family Services immediately shall consider concurrent planning, as described in Section 5 of the Children and Family Services Act so that permanency may occur at the earliest opportunity;

consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child; and, when the minor is removed from his or her own family, to secure for him or her custody, care and discipline as nearly as possible equivalent to that which should be given by his or her parents, and in cases where it should and can properly be done to place the minor in a family home so that he or she may become a member of the family by legal adoption or otherwise. Provided that a ground for unfitness under the Adoption Act can be met, it may be appropriate to expedite termination of parental rights:

(a) when reasonable efforts are inappropriate, or have been provided and were unsuccessful, and there are aggravating circumstances including, but not limited to, those cases in which (i) the child or another child of that child's parent was (A) abandoned, (B) tortured, or (C) chronically abused or (ii) the parent is criminally convicted of (A) first degree murder or second degree murder of any child, (B) attempt or conspiracy to commit first degree murder or second degree murder of any child, (C) solicitation to commit murder, solicitation to commit murder for hire, solicitation to commit second degree murder of any child, or aggravated assault in violation of subdivision (a)(13) of Section 12-2 of the Criminal Code of 1961, or (D) aggravated criminal sexual assault in violation of Section 12-14(b)(1) of the Criminal Code of 1961; or

(b) when the parental rights of a parent with respect to another child of the parent have been involuntarily terminated; or

(c) in those extreme cases in which the parent's incapacity to care for the child, combined with an

extremely poor prognosis for treatment or rehabilitation, justifies expedited termination of parental rights.

(2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court.

(3) In all procedures under this Act, the following shall apply:

(a) The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors.

(b) Every child has a right to services necessary to his or her safety and proper development, including health, education and social services.

(c) The parents' right to the custody of their child shall not prevail when the court determines that it is contrary to the health, safety, and best interests of the child.

(4) This Act shall be liberally construed to carry out the foregoing purpose and policy.

Ill Rev. Stat. 1989, ch. 37, § 801-3(8) Guardianship of the person

(8) "Guardianship of the person" of a minor means the duty and authority to act in the best interests of the minor, subject to residual parental rights and

responsibilities, to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned with his or her general welfare. It includes but is not necessarily limited to:

(a) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to a major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; and to make other decisions of substantial legal significance concerning the minor;

(b) the authority and duty of reasonable visitation, except to the extent that these have been limited in the best interests of the minor by court order;

(c) the rights and responsibilities of legal custody except where legal custody has been vested in another person or agency; and

(d) the power to consent to the adoption of the minor, but only if expressly conferred on the guardian in accordance with Section 2-29, 3-30, or 4-27.

(9) "Legal custody" means the relationship created by an order of court in the best interests of the minor which imposes on the custodian the responsibility of physical possession of a minor and the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, except as these are limited by residual parental rights and responsibilities and the rights and responsibilities of the guardian of the person, if any.

Ill Rev. Stat. 1989, ch. 127, § 4 - Department heads-Directors-Secretaries-Officers created

Each Department shall have an officer as its head who shall be known as director or secretary and who shall, subject to the provisions of this Act, execute the powers and discharge the duties vested by law in his respective department.

The following officers are hereby created:

...Director of Children and Family Services, for the Department of Children and Family Services.

89 Illinois Administrative Code (1989):

Reporting Child Abuse or Neglect to the Department
§ 300.30

a) Reports of suspected child abuse or neglect may be immediately made to the State Central Register via its toll free number (1-800-25A-BUSE) at any time, day or night, or on any day of the week. Reports may also be made to the nearest Department office. The Department encourages use of the toll-free hotline number.

b) Persons Mandated to Report Child Abuse or Neglect

1) Types of Mandated Reporters:

...

P) social workers;

...

Z) foster parents, homemakers or any other child care worker.

2) Acknowledgement of Reporting Responsibility

A) Individuals who become mandated reporters on or after July 1, 1986, by virtue of their employment shall sign statements acknowledging that they are mandated to report suspected child abuse and neglect in accordance with Section 4 of the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1985, ch. 23, par. 2054). The statements shall be on a form prescribed by the Department but provided by the employer. (See 89 Ill. Adm. Code 300. Appendix A.) The statement shall be signed before beginning employment and shall be retained by the employer as a permanent part of the personnel record.

B) The Department shall provide, upon request at a reasonable cost of $.50 each, copies of the Abused and Neglected Child Reporting Act to all employers employing persons who are mandated to report under this Act.

3) Interference with Reporting Prohibited

Mandated reporters who report instances of child abuse or neglect in their capacity as members of the staff of a medical or other public or private institution, school, facility or agency, may also notify the person in charge or designee of such institution, school, facility or agency that a report has been made. However, the person in charge or designee may not exercise any control, restraint, modification or other change in the report or the forwarding of such report to the Department.

4) Consequences of Failure to Report

A) The privileged quality of communication between any professional person required to report and patient or client shall not constitute grounds for failure to report suspected child abuse or neglect. Mandated reporters who willfully fail to report suspected child

abuse or neglect are subject to license suspension or revocation in accordance with the following statutes:

...

v) Social Worker Registration Act (Ill. Rev. Stat. 1985, ch. 111, pars. 6301 et seq.)

B) Any physician who willfully fails to report child abuse or neglect shall be referred to the Illinois State Medical Disciplinary Board for action. Any other person to report suspected child abuse or neglect who willfully fails to report such abuse or neglect shall be guilty of a Class A misdemeanor.

5) Written Confirmation of Reports

Mandated reporters shall confirm their telephone report in writing on a form prescribed by the Department within 48 hours of the oral report. The Department shall provide forms to mandated reporters - one for the exclusive use of medical professionals and another for use by all other mandated reporters. These confirmation reports shall be admissible as evidence in any judicial proceeding related to child abuse or neglect. Local investigative staff shall transmit confirmation reports to the State Central Register within 24 hours of receipt.

Services Delivered by the Department
§ 302.20 - Definitions

"Adoption assistance" or "adoption subsidy" means financial assistance from the Department which is provided to the adoptive parents after the finalization of an adoption. To be eligible for adoption assistance, the adoptive parent must adopt a child for whom the Department was legally responsible immediately before the adoption was finalized.

"Adoption placement" means a living arrangement with a family which is directed toward establishing that family as the child's new legal parents.

"Child welfare services" means public social services which are directed toward the accomplishment of the following purposes:

> protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children;
> preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; restoring to their families children who have been removed, by the provision of services to the child and the families;
> placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;
> assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and providing supportive services and living maintenance which contributes to the physical, emotional and social well-being of children who are pregnant and unmarried.

These services include but are not limited to: counseling, advocacy, day care, homemaker, emergency

caretaker, family planning, adoption, placement, child protection and information and referral.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parent(s) has signed an adoptive surrender or voluntary placement agreement with the Department.

"Department" as used in this Part, means the Department of Children and Family Services.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from severe physical, mental and emotional harm, and provided with necessary medical care and education required by law. A parent who has abandoned a child, deserted a child for three months, or failed to demonstrate an interest in a newborn child for 30 days after birth is deemed to have failed to have met the minimum parenting standards. In addition, a parent who is addicted to alcohol or who is a drug addict, as defined in the Dangerous Drug Abuse Act (Ill. Rev. Stat. 1985, ch. 91 ½, par. 120.1 et seq.) and who has consistently failed to cooperate in a rehabilitation program for a period of at least twelve months is deemed to have failed to have met the minimum parenting standards unless the child's safety and well-being have been ensured despite the parent's addiction.

"Permanency goal" means the continuous living arrangement which the Department deems desirable for and available to the child. A permanent legal status is usually a component of the permanency goal. The means for attaining a permanency goal as well as the

goal itself can change as the child's developmental and emotional needs change or as the child's and family's circumstances change.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or by a court of law.

"Service constellation" means a variety of services provided to a child and his/her family.

"Service plan" means a written plan on a form prescribed by the Department in the plan toward the permanency goals for the children.

"Successor guardianship" means the judicial transfer under Section 5-7 of the Juvenile Court Act of the Department's guardianship duties and responsibilities for a minor to a related or unrelated person whom the child has lived with for a continuous period of a year or more before transfer of guardianship.

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services which include placement.

Services Delivered by the Department
§ 302.30 a) and b) - Introduction

a) The Department of Children and Family Services is the state agency which is responsible for providing public child welfare services to children and their families. The types of services provided encompass the broad array of Department services as detailed in this part. Although the service goals in this part encompass

a variety of services, any specific service may be provided to families who are living together as well as to children and families who are living apart. Services are provided in order to assure permanent, secure and nurturing living situations for children.

b) The Department determines:

1) the children and family's eligibility for services as specified in 89 Ill. Adm. Code 303, "Access to and Eligibility for Day Care Services" and 89 Ill. Adm. Code 304, "Access to and Eligibility for Child Welfare Services";

2) the specific services which are necessary and appropriate for eligible children and families as indicated in the service plan; and

3) whether such services will be provided directly by the Department or through purchase of service providers.

Services Delivered by the Department
§ 302.50 a) and b) Functions in Support of Services

a) Services are delivered to children and their families in order to achieve the states service goals. These services are provided directly by Department staff or through purchase of services. In addition, Department staff perform clearly defined functions which are the supportive framework necessary for the delivery of services.

These functions include:

1) receipt of and investigation of reports of child abuse or neglect;

2) intake assessment of child and family needs;

3) planning for service provisions and arranging for appropriate services;

4) recruitment, study, approval and licensing of child care facilities;

5) initiating steps for court proceedings and/or legal guardianship;

6) arranging for payment for services purchased by or provided by the Department;

7) evaluating and monitoring services provided directly or purchased;

8) recruiting or securing service providers;

9) record keeping; and

10) service termination and follow up.

b) Additionally, both purchase of service and Department staff perform those supportive functions which are integral to a specific service.

Placement Services
§ 302.390 c) - Legal Authority to Place

The Department shall not place children until it has the appropriate legal authority to do so. Such legal authority includes: temporary protective custody in accordance with the Abused and Neglected Child Reporting Act; an adoptive surrender(s) in accordance with "AN ACT in relation to the adoption of persons, and to repeal an act therein named." (Ill. Rev. Stat. 1985, ch. 40, par. 1501 et seq.); custody or guardianship

in accordance with the Juvenile Court Act of 1987 (Ill. Rev. Stat. 1987, ch. 37, par. 701-1 et seq.); or temporary custody with written consent of the parent(s) or, if the child is not in the custody of either parent, written consent of the guardian or custodian of the child, in accordance with "AN ACT creating the Department of Children and Family Services codifying its powers and duties, and repealing certain Acts and Sections herein named" (Ill. Rev. Stat. 1987, ch. 23, pars. 5005 et seq.). A written consent from a parent, guardian or legal custodian requesting temporary placement services for their children(ren) is known as a voluntary placement agreement. A voluntary placement agreement may be entered into for a maximum of 60 days and requires prior written approval of the administrator in charge of the Department region or his designee. A voluntary placement agreement may be renewed for an additional 60 days only with the prior non-delegable written approval of the administrator in charge of the Department region.

Placement Services
§ 302.390 e) 1) and 2); i) 1) Placement Selection

Children who need placement shall:

1) be placed in the least restrictive setting which most closely approximates a family and in which the children's needs will be met; and

2) be placed within reasonable proximity to their homes, taking into account any special needs of the child and family and the availability of the service resources needed for the child and family.

i) Sharing Appropriate Information with the Caretaker

1) At the time the Department places a child in foster care or other substitute care setting, the Department shall provide available information about the child necessary for the proper care of the child to the foster parent or other caretaker.

Placement Services
§ 302.390 f) 1) Foster Family Home Care

Foster family home care is provided in licensed foster family homes for children who cannot remain home and who can benefit from a family structure of care. The Department shall have legal responsibility for the child before the child is placed in a foster family home.

Introduction to Child Welfare Services
§ 304.3

a) Purposes of Child Welfare Services

Child welfare services provided by Department staff or purchased by the Department from purchase of services providers are directed toward the following purposes:

1) protecting and promoting the welfare of all children, including handicapped, homeless, dependent or neglected children;

2) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children;

3) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible;

4) providing services to children and families so that children, who have been removed, may be restored to their families;

5) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

6) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and

7) providing supportive services and living maintenance such as residential maternity hones and counseling which contributes to the physical, emotional and social well-being of children who are pregnant and unmarried.

b) Essential Criteria for Child Welfare Services

The mere determination that parental or caretaker conduct, the home conditions, or the child care arrangements differ from the norm shall not be justification for providing child welfare services. Instead, the Department shall focus on the available alternatives and whether or not Department intervention is less detrimental to the child and family than no Department intervention using the following criteria:

1) Does the parent or caretaker fall below the minimum parenting standards as defined in Section 304.2?

2) Is there clear evidence that the home conditions or the parental or caretaker conduct are likely to be detrimental to the child?

3) What is the specific harm to the child if left in the home without the support of child welfare services?

4) Is there clear evidence that the family needs child welfare services to keep the family together or to help them through a crisis which threatens family stability?

5) It is probable that the provision of Department services will alleviate the conditions or change the conduct which has led to harm or threatened harm to the child?

Eligibility for Child Welfare Services
§ 304.4

a) Children and Families the Department Must Serve

The Department must, by law, provide child welfare services to the following categories of children and families:

1) abused and neglected children and their families;
2) dependent children and their families;
3) children under the age of 13 who have been adjudicated delinquent and their families;
4) children for whom the Department already has court ordered legal responsibility who are subsequently adjudicated delinquent or minors requiring authoritative intervention and their families. The Department is mandated to continue serving these children even if they are over age 13 when they are adjudicated delinquent or minors requiring authoritative intervention.

b) Children and Families the Department May Elect to Serve

In addition to the children and families the Department must serve, the Department may elect to provide child welfare services to other children and families who request the services, who the Department deems will benefit from the services.

c) No Financial Eligibility
The Family's income, assets or other financial resources do not affect whether a family is eligible for child welfare services. Instead, child welfare services are provided to the children and families who need them, who will benefit from them and who the Department is responsible for serving, regardless of the family's ability to pay for the services.

Decision Concerning Case Opening
§ 304.6 a):

The Department shall decide whether a case will be opened no later than 10 working days of the date a child abuse or neglect report is determined to be "indicated." For all other cases, the Department shall ` whether a case will be opened within 30 working days of the referral for services.

Client Service Planning
§ 305.2 - Definitions

"Abandonment" means parental conduct which demonstrates the purpose of relinquishing all parental rights and claims to the child.

"Administrative case review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subjects of the review.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parent(s) have signed an adoptive surrender or voluntary placement agreement with the Department.

"Department client" means a child or a family who is receiving child welfare services either directly from the Department or through a purchase of service provider.

"Desertion" means parental conduct which evidences an intention to permanently terminate custody of a child, but not to relinquish all parental rights, claims and responsibilities.

"Discharge planning" means service planning which focuses on providing a smooth transition from Department guardianship or custody and the receipt of child welfare services to discharge from guardianship or custody and the termination of child welfare services.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from severe physical, mental and emotional harm, and provided with necessary medical care and education required by law. A parent who has abandoned a child, deserted a child for three months, or failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child for 30 days after birth is deemed to have failed to have met the minimum parenting standards. In addition, a parent who is addicted to alcohol or who is a drug addict, as defined in the (Dangerous Drug Abuse Act, (Ill. Rev. Stat. 1979, ch. 91 ½, pars. 120.3-3 and 120.3-4) and who

has consistently failed to cooperate in a rehabilitation program for a period of at least twelve months is deemed to have failed to have met the minimum parenting standards unless the child's safety and well-being have been ensured despite the parent's addiction.

"Parents" means the child's biological or adoptive parents or the child's legal guardian if the legal guardian is not a public or private agency.

"Permanency goal" means the continuous living arrangements which the Department deems desirable for and available to the child. A permanent legal status is usually a component of the permanency goal. The means for attaining a permanency goal as well as the goal itself can change as the child's developmental and emotional needs change or as the child's and family's circumstances change.

"Permanent family placement" means placement in a foster family homes or a relative home which is intended to last until the child reaches age 21 or until the child is capable of self-sufficiency. The Department may retain guardianship of the child, or the foster parent or relative may take guardianship of the child.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or by a court of law.

"Service plan" means a written plan on a form prescribed by the Department which guides all participants in the plan toward the permanency goals for the children.

"Substitute care" means the care of children who require placement away from their families. Substitute care includes foster family care, care provided in an approved

relative home, care provided in a group home, and care provided in a child care or other institution.

"Termination of parental rights" means a court order which relieves the legal parents of parental responsibility for the child and revokes all legal rights with respect to the child. The termination order also frees the child from all obligations of maintenance and obedience with respect to the legal parents.

Client Service Planning
§ 305.3 a) 1 and 2 - Introduction to Client Service Planning

a) The Need For a Permanent, Secure and Nurturing Home

1) The Department recognizes that children need permanent, secure, and nurturing homes for healthy psychological development in order to mature to stable adulthood. Therefore, the Department strives to preserve family life and to stabilize children's homes, whenever possible, and to assist in the solution of problems which are likely to result in the abuse, neglect, or exploitation of children.

2) When children and families must be separated to reduce or prevent harm to the children, the Department strives to reunite families as quickly as is consistent with the children's safety and well-being. Infrequently, children and families cannot be reunited because the parents are unable or unwilling to care for the children and therefore cannot achieve the minimum parenting standards. When this occurs the Department strives to find other permanent homes for children.

Client Service Planning
§ 305.5 a) - Service Plan

a) Purpose of the Service Plan
The service plan is a written plan which is established between the Department, the purchase of service providers, and, if possible, the child and family served. Service plans approved by the Department are required regardless of whether the child and family are served directly by the Department or through purchase of service providers. The initial service plan shall be completed within 30 days of case opening and at least once every six months thereafter. The service plan shall be changed and updated as the child and family's situation changes and shall be reviewed regularly as specified in Section 305.6.

Client Service Planning
§ 305.6 - Case Review System

a) The Case Review System

1) The Department has a case review system for all the children and families it serves. This case review system has two components: the administrative case review and the regular six month case review. Administrative case reviews are conducted for children living, for six months or longer, in foster family homes which are licensed or approved as meeting licensing standards, group homes, or child care institutions. In addition, the Department may elect to conduct administrative case reviews on other groups of children as fiscal and staffing resources permit.

2) Regular six month case reviews are conducted for all other children and families served by the Department.

Frequency of Case Reviews

Case reviews, whether an administrative case review or a regular six month review, are conducted on every case at least once each six months unless a dispositional hearing conducted by a court or a court approved panel was held the month prior to a scheduled case review. In this instance, the dispositional hearing shall replace the case review.

c) Purpose of Case Reviews
Case reviews are conducted in order to:

1) decide whether the Department's continuing intervention is necessary;

2) decide whether services, including placement services, are necessary and appropriate;

3) decide whether the Department, the service providers, the family, the substitute care provider, if any, and the child are complying with the service plan and, if they are not complying, whether changes in the service plan are needed;

4) decide whether there is progress to resolve the child and family's problems and whether the progress is satisfactory;

5) decide whether the projected month for achieving the permanency goal should be changed;

6) complete another service plan and change the permanency goal (if appropriate); and

7) provide the opportunity for parents and the children (if participating in the planning) to understand the plan and know what is expected of them.

d) Administrative Case Reviews
Administrative case reviews shall:

1) be convened by a staff member from the Department office responsible for advocating for permanency for children;

2) include the worker and/or supervisor from the Department and/or the substitute care provider agency which has case responsibility for both the children and the family;

3) be open to the participation of the children's parents and their representatives. However, if parents are known to be violent and potentially dangerous to other participants in the review, they will be excluded. If the Department has file a petition seeking the termination of parental rights, these parents will not be invited to the review;

4) be open to the participation of children who are determined able to participate without excessive harm when considering their age, maturity, circumstances, and understanding.

5) be conducted in the office serving the parent's county of residence, if known and within the State of Illinois, unless the parent agrees to travel to another office; and

6) focus on whether children should be returned to their parents' homes or whether another permanent home should be sought.

e) Notice of Administrative Case Reviews

The parents and the child (if participating in the review) shall be given a written notice of the date, time, place and purpose of the administrative case review at east 14 days prior to the scheduled review. In addition, this notice shall inform the parents of their right to brig a representative with them to the review.

f) Regular Case Reviews

Regular case reviews are conducted by the worker responsible for the case. The parents and/or the child (if participating in the review) are expected to be present before a case review is conducted. A service plan shall be completed during the case review.

Permanency Advocacy Services
§ 327.4 - Duties of the Guardianship Administrator

The duties of the Guardianship Administrator or those with delegated signatory authority include, but are not limited to:

a) Consenting to the adoption of minors when the court decree provides for such consent, or when children have been surrendered to the Department by parents or caretakers or when all applicable parental rights have been terminated;

b) Making important decisions in conjunction with wards, and parents when possible, such as consents to marriage, to enlistment in the armed forces, to major medical, surgical and psychiatric treatment, and to travel and visitations within limitations directed by court order;

c) Representing or arranging for qualified representation of wards in all litigations to which they are parties or which affect them;

d) Expediting the receipt of all possible benefits due children for whom the Department has legal responsibility including insurance, veteran's benefits, social security, and damages due to the negligence or misconduct of others; and

e) Acting in other ways as may be indicated in order to assure a permanent, secure and nurturing living arrangement for each child the Department serves through the preservation of reunification of families or the creation of new legal families, or in order to assure continuity or care in long term treatment programs, as needed by the child.

Authorized Child Care Payments
§ 359.1 - Purpose

The purpose of these rules is to identify the various types of services for which the Department may provide payment on behalf of children and families served by the Department.

Authorized Child Care Payments
§ 359.2 - Definitions

...

"Children for whom the Department has legal responsibility" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or whose parent(s) has signed an adoptive surrender or voluntary placement agreement with the Department.

"Family preservation services" means those services provided to children and families who require social services to maintain the family unit intact.

...

"Substitute care services" means those services provided to children who require placement away from their families.

Authorized Child Care Payments
§ 359.3 - Introduction

The Department will pay for substitute care living arrangements for children for whom the Department is legally responsible, for child welfare services to children and their families determined eligible for them, and for goods, services and benefits necessary for the personal and physical maintenance of children living away from to their parents in substitute care living arrangements.

Authorized Child Care Payments
§ 359.4 - Payments for Substitute Care Services

Payments are made for children for whom the Department has legal responsibility in the following types of substitute care living arrangements if the placements meet the requirements established via the purchase of service contracts and the applicable licensing rules as specified in 89 Ill. Adm. Code 335, Relative Home Placement, 89 Ill. Adm. Code 357, Purchase of Services, 89 Ill. Adm. Code 401, Licensing standards for Child Welfare Agencies, 89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes, 89 Ill. Adm. Code 403, Licensing Standards for Group Homes, and 89 Ill. Adm. Code 404, Licensing Standards for Child Care Institutions and Maternity Centers:

a) Forster family care is provided in licensed foster family homes or approved homes of relative caretakers. The Department recognizes the following types of foster family care:

1) Specialized foster family homes and intensive service foster homes receive additional monthly compensation because they accept children with medical, behavioral and/or psychological problems or because they accept pregnant girls or young mothers who are in need of specialized training in parenting skills, child development, money management, and self sufficiency.

2) Emergency foster homes may be paid a flat rate for days of service provided or may receive retainer fees to assure that emergency beds are available 24 hours per day.

3) Department boarding homes are licensed foster family homes operated by foster parents supervised by the Department.

4) Private agency foster homes are licensed foster homes supervised by licensed child welfare agencies.

Licensing Enforcement
§ 383.1 - Purpose

These rules describe the process used to resolve complaints related to licensed and unlicensed facilities; the Department's licensing investigation, denial, refusal to renew, and revocation policies; and uniform standards of practice for administrative hearing involving licensed facilities.

Licensing Enforcement
§ 383.2 -Definitions

"Complaint" means any report to the Department alleging violation of the laws and rules related to the licensing of child care facilities. 'Complaint' may also mean a written statement of charges issued against a licensee for purposes of an administrative hearing.

"Department" means the Illinois Department of Children and Family Services.

"Hearing" means any formal proceeding involving the refusal to issue a full license to the holder of a permit, the revocation of a permit or the revocation or refusal to reissue or renew a license to operate a child care facility authorized to be held in the Department.

"Investigation" means an information gathering and assessment process initiated and conducted by the

Department in order to determine compliance with Department rules and Federal and state laws.

"License" means a document issued by the Department of Children and Family Services which authorizes a child care facility to operate in accordance with the applicable standards and the provisions of the Child Care Act and rules promulgated thereunder.

"Licensee" means any holder of a license or permit issued by the Department.

"Licensing representative" means those Department staff or other persons authorized under the Child Care Act to examine licensed facilities.

"Party" to any administrative hearing or other proceeding in the Department is the Department, or respondent as the case may be.

"Respondent" means a licensee against whom a written statement of charges has been issued.

Licensing Enforcement
§ 383.3 - On-Site Inspection of Child Care Facilities

Prior to recommending issuance of a license or permit, the site of a proposed child care facility shall be examined by a licensing representative to determine compliance with applicable statutes, licensing rules and standards. In order to determine continuing compliance with applicable statutes and rules a licensed child care facility shall be visited periodically and authorized representatives of the Department may visit the facility without notice during it's hours of operation.

Licensing Enforcement
§ 383.4 - Complaints Concerning Unlicensed and Licensed Facilities

Complaints concerning child care facilities shall be received orally or in writing by the Department's licensing representatives serving the geographic area of the facility. Additionally, complaints shall be initiated by Department employees when they observe possible licensing violations.

Licensing Enforcement
§ 383.5 - Investigation of Complaints Concerning Unlicensed Facilities

The Department shall initiate investigations of complaints of unlicensed child care facilities within two (2) business days of its receipt of the complaint.

Licensing Enforcement
§ 383.6 - Disposition of Complaints Concerning Unlicensed Facilities

a) Within seven (7) calendar days from receipt of the complaint, the Department shall make a formal determination of whether an unlicensed child care facility is being or has been operated.

b) Within five (5) calendar days of its determination, the Department shall send a certified letter to the operator(s) which shall include:

1) Notification that, by law, a license is required for the type of child care provided.

2) A request that they refrain from operating without a license.

c) A copy of the above-cited letter shall be forwarded to the appropriate State's Attorney and the Attorney General.

d) Under the following circumstances, a report of the investigation and a request for prosecution shall be forwarded to the State's Attorney:

1) Continued operation of the facility after notification that a license is required;

2) Second or further substantiated incidences of operating without a license;

3) Reports of abuse or neglect as required by Department rulemaking Part 1.3 Child Protective Services;

4) Conditions which otherwise jeopardize the health, safety or welfare of a child.

Licensing Enforcement
§ 383.7 - Investigation of Complaints Concerning Licensed Facilities

a) When a complainant alleges abuse or neglect to the child(ren) in the facility, the Department's local child protective staff shall be notified immediately. They shall conduct a child abuse or neglect investigation in accordance with part 302, Services Delivered by the Department.

b) For all other complaints alleging violation of licensing standards and/or rules, an investigation shall commence within two (2) business days of receipt of the complaint by the Department except that no licensing investigation will be conducted when:

1) the alleged violation occurred more than 60 days before receipt of the compliant and is not of a continuing nature;

2) the complaint is anonymous and fails to allege immediate physical danger to a child; or

3) no violations of applicable laws, licensing standards or rules are apparent from the complaint.

c) During the course of the investigation, the person making the complaint (if known), as well as others who may have knowledge relevant to the complaint, shall be interviewed.

d) A personal unannounced visit by the licensing representative will be made to the location of the licensee.

e) The respondent's refusal to allow the licensing representative to conduct the licensing investigation is basis for revocation of the facility license.

Licensing Enforcement
§ 383.8 - Disposition of Licensing Complaints Concerning Licensed Facilities

a) The investigation shall be completed within thirty (30) calendar days of receipt of the complaint. However, upon written notice to the licensee the investigation may be extended for an additional thirty (3) calendar days.

b) Within fifteen (15) business days after completing the investigation, the Department shall make a formal determination of whether a licensing violation has occurred.

c) Within five (5) calendar days of the determination, a certified letter shall be sent to the licensee summarizing the findings of the investigation.

d) If there is a determination that licensing rules or standards have been violated, the letter shall:

1) cite the licensing rules or standards violated;

2) notify the respondent that within 10 days of the postmark date of the letter he may send a written request to the licensing coordinator of the region in which the facility is located requesting an informal review of the decision with the licensing representative and licensing coordinator; and

3) notify the licensee that failure to correct the violation(s) may result in the Department's seeking to revoke or refusing to renew a license or refusing to issue a full license to the holder of the permit."

e) When the licensee requests an informal review of the Department's findings or determination and indicates a willingness to correct the violations, a time period for compliance shall be allowed. The Department shall confirm, in writing, the time period allowed. The licensing representative shall make unannounced on-site visits to determine whether the identified violations have been corrected with the time period allowed for compliance.

f) If the findings of the informal review do not demonstrate reasonable compliance within the specified time period, the licensee shall be notified by registered mail of the Department's intent to revoke the license or refusal to issue or renew it. The licensee shall also be notified that (s)he has 10 days from the postmark date of the registered letter to request, in writing, a hearing.

g) When a licensee does not request an informal review of the Department's intent to revoke a license or refusal to issue or renew a license, the Department shall proceed to revoke or refuse to issue or renew the license.

Licensing Standards for Child Welfare Agencies
§ 401.20 g) - Agency Responsibility

The child and/or his parent or guardian shall be active participants, to the extent possible, in all decisions regarding the reasons for, and the goal of placement and the service agreement.

Licensing Standards for Foster Family Homes
§ 402.2 - Definitions

"Child" means a person under 18 years of age.

"Child care facility" means any person, group of persons, agency, association or corporation which arranges for or cares for children unrelated to the operator of the facility, apart from the parents. Child care facilities may be established for profit or not-for-profit.

"Department" means the Department of Children and Family Services.

"Foster family home" means the residence of the family which provides full-time family care and training to children unrelated to them. Foster family homes are limited to a maximum of 8 children including the foster family's children unless all of the children unrelated to the foster family are of common parentage or the Director of the Department of Children and Family Services has waived the limit of 8 unrelated children for good cause pursuant to Section 402.15 (b) and only to facilitate an adoptive placement.

"License" means a document issued by the Department of Children and Family Services which authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act.

"Licensee" means those individuals, agencies, or organizations who hold a license or permit issued by the Department of Children and Family Services.

"Licensing applicant" means those individuals, agencies, or organizations who applied for a license from the Department of Children and Family Services.

"Licensing representative" means those Department staff or other persons authorized under the Child Care Act to examine facilities for licensure.

"Permit" means a one-time only document issued by the Department of Children and Family Services for a two month period to allow the individual(s) to become eligible for a license.

"Supervising agency," for the purpose of this part, means a licensed child welfare agency, a license-exempt agency, or the Department of Children and Family Services.

Licensing Standards For Foster Family Homes
§ 402.4 - Application for License

a) Application for license as a foster family home shall be completed, signed by the foster parent applicant(s) and filed with the Department of Children and Family Services by the supervising agency on forms provided by the Department.

b) As part of the application process, each foster family home application shall authorize fingerprinting in accordance with Part 380, Background Check of Foster family Applicants, to determine if the applicant has ever been charged with a crime, and if so, the disposition of the charges.

c) The supervising agency shall study each foster home under the supervision before recommending issuance of a license. The Licensing study shall be conducting by a qualified Licensing representative and shall be reviewed and approved by his supervisor. Supervisory approval indicates recommendation for a license or denial of the license. The Licensing study shall be in writing and shall be signed by the Licensing Representative; and by the supervisor.

d) A new application shall be filed when any of the following occurs:

1) when an application to license has been withdrawn, and the licensee seeks to reapply; or

2) when there is a change in the name of the licensee, the addressed of the foster home, the supervising agency, or in the area of the home used for children; or

3) when there is a change in the status of joint licensees, such as a separation, divorce or death; or

4) when the Department has revoked or refused to renew a license, and a new license is sought.

e) A new application may be submitted at any time.

Licensing Standards for Foster Family Homes
§ 402.6 b) and c) - Provisions Pertaining to the License

b) The number of children cared for in the foster family home shall not exceed the license capacity.

c) The foster parents' biological and adopted children under 18 years of age shall be counted when determining license capacity.

Licensing Standards For Foster Family Homes
§ 402.12 - Qualifications of Foster Parents

a) The licensee(s) shall be either a single foster parent or a man and woman married to each other. Each foster parent shall be willing and able to assume appropriate responsibilities for the child or children received for care.

b) Foster parents shall be stable, law abiding, responsible, mature individuals, at least 21 years of age, who shall have passed the background check required for foster parents in Part 380, Background Check of Foster Family Homes Applicants and shall be able to accept agency supervision.

c) Foster parents shall adequately supervise children in their care to assure compliance with laws including but not limited to, criminal laws.

d) Foster home applicants shall provide the names and addresses of at least three unrelated references who can attest to the applicant's moral character.

e) Unless parental rights have been terminated, foster parents shall respect and support a child's ties to his biological family and shall cooperate with the supervising agency.

f) The family shall have sufficient financial resources to provide basic necessities for themselves and their own children and the foster child(ren).

Licensing Standards For Foster Family Homes
§ 402.15 a) - Number of Children Served

The maximum number of children permitted in foster family home is 8, unless all of the foster children are of common parentage or a waiver has been granted in accordance with b) below. This maximum number includes the foster parents' own children and all other children under the age of 18, cared for on a part-time or full-time basis.

Licensing Standards For Foster Family Homes
§ 402.16 - Meeting Basic Needs of Children

a) All children in the foster family shall be treated equitably.

b) Children shall receive supervision appropriate to their age at all times. All children in the foster home shall be protected from exploitation, neglect, and abuse. Suspected child abuse or neglect shall be reported to the supervising agency and to the Department immediately.

c) Each child shall be given the opportunity to develop social relationships through participation in schools, and other community and group activities. Each child shall have the opportunity to invite friends to the foster home and to visit in the home of friends.

d) Care shall be exercised in giving permission for the foster child to visit overnight with friends or relatives of the child or foster parent(s). Extended trips away from the foster home must be approved by the foster child's parent or guardian.

e) Personal allowance money shall be available to the children based upon the child's age and ability to manage the money. Adolescents may be allowed to earn additional spending money.

f) Foster parents shall assist the child in the proper handling of money.

g) Each child shall have the opportunity to learn to assume some responsibility for himself and for household duties in accordance with his age, health, and ability. No child shall be permitted to do tasks which are hazardous, dangerous or risk harm to the child.

h) The supervising agency shall immediately be notified of any situation that affects the care of the child, including but not limited to death, serious illness, incarceration, death of a child or any other significant occurrence.